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Regulating Science

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William R. Havender on Cyclamates

The New Feminism and the World of Work — *Rachel Flick*

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Should science be stopped? The case of recombinant DNA research

ELLIOT S. GERSHON

In 1970, shortly after the first isolation of a DNA fragment which constituted a single identifiable gene, the young scientists involved in the project decided they would not continue their work on DNA. The reason, they reported, was that such work would eventually be put to evil uses by the large corporations and governments that control science.[1] They also believed it would lead to political oppression and the creation of so-called inferior subclasses of beings based on genetic classification.[2] Dr. James Shapiro, who was 26 at the time, announced he would leave science altogether for a career in radical politics; Dr. Jonathan Beckwith, who was then 33, shifted his work to other areas of genetics and became a leader of Science for the People. This is a radical group which several years later—during the height of the recombinant DNA debate—argued against permitting recombinant DNA research in the United States on the grounds that it was intrinsically dangerous to man and nature, and that this dan-

[1] R. Reinhold, "Scientists isolate a gene; step in heredity control," *New York Times*, (November 23, 1969); J.K. Glassman, "Harvard genetics researcher quits science for politics," *Science* 167 (1970): 963-964.

[2] J. Beckwith, "Social and political uses of genetics in the United States: Past and present," *Annals of the New York Academy of Sciences* 265 (1976): 46-58.

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ger had been ignored by scientists concerned only with their immediate, personal advantage. Furthermore, the group argued, as social policy this research would diminish awareness of the social and political causes of health problems, and would allow genetics to be used as a tool of social control against "the people." Emphasis on technological solutions to health problems, they declared, results in diversion or distraction from other goals that are essential for real social progress.[3]

Beckwith's and Shapiro's renunciations of their work seem to have had no effect whatever on subsequent developments in molecular genetics, because the dangers they described seemed utterly fantastic to scientists in the field and made no significant impression on public opinion. Only after the discovery of recombinant DNA did concern over genetics research became more widespread, and the political opponents of human genetics then joined forces with those concerned with the environmental and health effects of proposed laboratory experiments.

The movement these groups generated to stop recombinant DNA experimentation is a fascinating case of political-scientific controversy—in this instance, over the public perceptions of the imminent hazards of a new scientific or technical development. Among the numerous public health concerns in recent years, this one is important in several respects. For this movement failed to stop the technology, so the predictions of imminent hazard can now be tested against reality, and the intellectual and political agendas of the movement can be distinguished from its valid scientific claims.

The recombinant revolution

By 1970 the double-helix structure of DNA had been known for eighteen years, as had the fact that DNA stores genetic information in a linear sequence, much like a magnetic tape containing a computer program. Although it was not known in the 1950s, the magnetic tape analogy holds in nearly all respects, including splicing. Like a computer tape, the genetic code is translated into output, and the connection between specific nucleic-acid sequences (code) and specific amino-acid constituents of proteins (which are a principal output) had been discovered in 1961. What was not known in 1970, but was discovered shortly thereafter, was that segments of

[3] Science for the People, "Biological, social and political issues in genetic engineering," in *The Recombinant DNA Debate*, eds., D.A. Jackson and S.P. Stich (Englewood Cliffs, New Jersey, Prentice-Hall, 1979) pp. 99-126.

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DNA genetic code can be spliced together precisely from virtually any source. When the splice is between DNA from different species, the result is "recombinant DNA." Copies of one segment of code can be inserted onto other areas of the same "reel"—that is, the same chromosome in the case of higher organisms—or onto different "reels." These processes can occur *in nature*, as well as in the laboratory; this was not demonstrated until 1977, though, after critics had advanced the argument that the production of recombinant DNA was a new evolutionary event, one that would violate natural barriers and result in the production of dangerous new species.[4] The mobility of genes in nature had been one of the hardest concepts for the scientific community, and for intelligent people in general, to appreciate. (Gene rearrangement had actually been demonstrated in maize before the helical structure of DNA was known, but the work had been dismissed.) The growing opinion now is that genetic deletions, insertions, duplications, inversions, and other rearrangements and migrations are the major source of genetic change and variation in nature, and this view has led to a reassessment of evolutionary theories of continuous and gradual change, in favor of those crediting sudden genetic events as major factors in evolution.

The isolation of bacterial enzymes that can splice together DNA from different species was an historic development in molecular genetics. Scientists quickly realized that these enzymes, called "restriction endonucleases" or "restriction enzymes," could be used to place a gene in a context in which it could be reproduced and possibly function. (The work of Beckwith and his colleagues had isolated the gene in a form in which it would not function or reproduce, thereby preventing gene cloning or the expression of gene products.) The first scientists to use restriction enzymes to form recombinant DNA from different species considered this a unique and far reaching event; talk of "new life forms" circulated in the scientific community and in the press.[5] The excitement generated by these first experiments has endured to this day, fueled by a series of scientific advances that followed the new ability to isolate and clone specific genes, as well as by numerous Nobel prizes and by the financial community's interest.

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[4] S. Chang and S.N. Cohen, "In vivo site-specific genetic recombination promoted by EcoRI restriction endonuclease," *Proceedings of the National Academy of Sciences of the USA* 74 (1977): 4811-4815.

[5] S.N. Cohen, A.C.Y. Chang, H.W. Boyer, R.B. Helling, "Construction of biologically functional plasmids in vitro," *Proceedings of the National Academy of the Sciences of the USA* 70 (1973): 3240-3244.

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But serious concerns followed the same experiments. In 1971, Paul Berg (who later won a Nobel prize for his role in developing recombinant DNA) and a student planned to produce a hybrid of two viruses, SV40 and lambda. When this plan was announced at a conference, the discussants noted that SV40 is a mammalian tumor virus and lambda is a virus of E. coli, the common bacteria of the human intestinal tract. The obvious question was raised: Could not this experiment produce organisms with the potential ability to spread epidemics of cancer? As it happens, the specific experiment as proposed would have interrupted the reproduction genes of lambda, and so the products would have constituted no danger; but this was not known at the time, and the concerns were of a more general nature and had to be considered very seriously.

Self-regulation begins

There were two kinds of scientific concerns—specific fears of identifiable risks associated with specific experiments, and general fears of cataclysmic dangers if this research were pursued. At a 1973 Gordon Conference, a group of molecular biologists formed a committee chaired by Berg, and sponsored by the prestigious National Academy of Sciences, to take up the entire question. In a now famous pair of identical letters to *Science* and *Nature*—famous in part because a Nobel prize seems to have come to each signer—the committee warned of "potential biohazards of recombinant DNA molecules." Although they addressed the general possibility that "new DNA elements . . . might possibly become widely disseminated among human, bacterial, plant, or animal populations with unpredictable effects," their recommendations to laboratory scientists were limited to a few specific types of experiments. A moratorium was proposed on the introduction of new antibiotic resistance or bacterial toxin genes into bacteria that did not normally carry these genes, and on the introduction of DNA from tumor viruses or other animal viruses into autonomously reproducing DNA elements.[6]

The same committee convened an international meeting at Asilomar, California, early the next year, whose goal was to devise safeguards "so evidently tight that no one could accuse scientists of [being] self-serving," as the senior British delegate eventually

[6] P. Berg et al., letter to the editor: "Potential biohazards of recombinant DNA molecules," *Science* 185 (1974): 303.

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persuaded the conferees. The Berg committee also proposed that the director of the National Institutes of Health (NIH) appoint a committee to advise him on establishing safety procedures for these studies within the United States. These standards would be enforced through the NIH and other government agencies that disburse government research grants.

The 1975 international meeting at Asilomar established the safety principles for DNA studies that were eventually adopted in the U.S. (as the "NIH guidelines") and in most other countries. The two guiding principles were: *containment* of the experiments within specially constructed laboratories, based on the established practices of scientists working with contagious diseases and tumor viruses; and the use of *enfeebled vectors* (carrier organisms) for the recombinant DNA molecules. The vectors consist of mutated strains of the intestinal bacteria E. coli which, even if they should escape the experiment and enter a human gut, could survive only a very short time.[7]

Having established these principles, the Asilomar conference also voted to end the voluntary moratorium on recombinant DNA experiments. The conferees were well aware that their recommendations were going to be questioned outside the scientific community, in fact, one of the main reasons for drawing them up was the concern, voiced by Stanley Cohen of Stanford, that "if the collected wisdom of this group doesn't result in recommendations, the recommendations may come from other groups less well qualified." Despite this pressure, the scientific community generally felt that these scientists had performed a valuable public service. Writing about Paul Berg, who chaired the Asilomar conference, the science journalist Nicholas Wade wrote, "Probably few other people could have asked for a moratorium, got it to stick worldwide, and then handled the issue with the openness and disinterest that disarmed resentment and led the world's scientific community to a notable and generally harmonious consensus."[8]

Washington waits and watches

In November 1975 the NIH advisory committee published its own proposed guidelines, which followed the Asilomar principles

[7] P. Berg et al., "Asilomar conference on recombinant DNA molecules," *Science* 188 (1975): 991-994.
[8] N. Wade, "Genetics: Conference sets strict rules to replace moratorium," *Science* 187 (1975): 931-935.

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of containment and enfeebled vectors, but which were considerably stricter about the levels of safety protection required for particular types of experiments. At this point, NIH invited public comment on the guidelines before they went into effect. What came forth was severe apprehension about the entire technology, fears of worldwide cataclysm, and calls to stop this research entirely, or at least to establish multiple and restrictive levels of regulation. These criticisms were repeatedly voiced in scientific journals and public forums, and before legislative committees. For example, Dr. Erwin Chargaff wrote to *Science* that:

> a bizarre problem is posed by recent attempts to make so-called genetic engineering palatable to the public . . . what seems to have been disregarded completely is that we are dealing here much more with an ethical problem than with one in public health, and that the principal question to be answered is whether we have the right to put an additional fearful load on generations that are not yet born. I use the adjective 'additional' in view of the unresolved and equally fearful problem of the disposal of nuclear waste. Our time is cursed with the necessity for feeble men, masquerading as experts, to make enormously far-reaching decisions. Is there anything more far-reaching than the creation of new forms of life? . . . But beyond all this, there arises a general problem of the greatest significance, namely, the awesome irreversibility of what is being contemplated. You can stop splitting the atom; you can stop visiting the moon; you can stop using aerosols; you may even decide not to kill entire populations by the use of a few bombs. But you cannot recall a new form of life. . . . An irreversible attack on the biosphere is something so unheard-of, so unthinkable to previous generations, that I could only wish that mine had not been guilty of it. The hybridization of Prometheus with Herostratus is bound to give evil results.[9]

Dr. Robert Sinsheimer, a participant in the Asilomar conference who later came out in favor of a permanent moratorium on recombinant DNA experiments because of their evolutionary danger, criticized scientists who proclaimed a right to free inquiry, yet were oblivious to the evolutionary and social dangers of this particular inquiry. A governmental authority, he argued, must take responsibility for and restrain this "great and terrible power."[10] Numerous other calls for regulation were voiced by environmentalists, by radical groups such as Science for the People, and by others.

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[9] E. Chargaff, letter to the editor: "On the dangers of genetic meddling," *Science* 192 (1976): 938-939.

[10] L.R. Sinsheimer, "Two lectures on recombinant DNA research" in *The Recombinant DNA Debate*, eds. Jackson and Stich.

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These views found a measure of support in Washington. Senators Edward Kennedy and Jacob Javits wrote to President Ford in July 1976, shortly after the NIH guidelines were officially released, that they were:

> gravely concerned that these relatively stringent [NIH] guidelines may not be implemented in all sectors of the domestic and international research communities and that the public will therefore be subjected to undue risk. . . . We urge you to implement these [NIH] guidelines immediately whenever possible by executive directive and/or rulemaking, and to explore every possible mechanism to assure compliance. . . .[11]

Senator Kennedy favored more public participation in science, and had been critical of scientists for making public policy in private. Several bills submitted to Congress in 1977 had provisions for federal licensing and inspection of laboratories, complex reporting systems, and fines of thousands of dollars for scientists who violated the rules.[12]

The bill proposed by Senator Kennedy would have established an independent national regulatory commission specifically for recombinant DNA research. It was to be comprised primarily of nonscientists, and would control all research in this field (except that local communities could set more severe restrictions, or ban the research altogether). Barbara J. Culliton remarked in *Science* that, in the minds of many biologists, Kennedy's bill assumed the character of a monster as fearsome as any biological mutant one could imagine coming from a recombinant DNA laboratory.

During most of 1977 there was a scramble among government agencies to acquire this new regulatory territory. Fortunately, however, disagreements among legislators prevented any one of the proposed bills from being passed quickly. For during that year, a consensus developed among many scientists that the risks of recombinant DNA research were, at worst, very much smaller than they themselves had previously estimated, and perhaps nonexistent. This consensus grew after S. Chang and S.N. Cohen demonstrated that recombinant DNA is also produced in nature.[13] Cohen and other scientists succeeded in gaining the attention of several con-

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[11] J.P. Swazey, J.R. Sorenson, C.B. Wong, "Risks and benefits, rights and responsibilities: A history of the recombinant DNA research controversy," *Southern California Law Review* 51 (1978): 1019-1078.

[12] The historical account here relies heavily on the cited reports by three reporters for the journal *Science*: Nicholas Wade, Barbara J. Culliton, and Eliot Marshal.

[13] Chang and Cohen, "In vivo site-specific genetic recombination promoted by EcoRI restriction endonuclease."

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cerned Senators, including Senator Kennedy, and impressed them with these new scientific assessments. In September, Senator Adlai Stevenson called on the Senate to put off legislation in order not to act in haste, and Senator Kennedy withdrew support from his own bill, joining with the view that the hazards were questionable rather than imminent.

The paper by Chang and Cohen was a scientific turning point in the debate because it demonstrated that recombinant DNA production is not an unprecedented tampering with the balance of nature. In retrospect, it is surprising that scientists assumed for so long that recombinant DNA production, a process that depends on natural biological products such as the restriction endonucleases, would have occurred only in the laboratory.[14] Perhaps most importantly, the research and the warnings of hazard had gone on for years, but *nothing had happened.* By the end of 1978, only the most activist environmentalist groups were opposing recombinant DNA research, and even they were under severe internal criticism from scientists who were prominent trustees of groups such as Friends of the Earth and the Natural Resources Defense Council. The environmentalist movement was accused of scaremongering, willfully disregarding all evidence, singlemindedly pursuing a general interest in slowing down technology, and protecting its political investment in hobbling DNA research. James D. Watson wrote in the *Washington Post* that "such groups thrive on bad news, and the more the public worries about the environment, the more likely we are to keep providing them with the funds that they need to keep their organizations going. So if they do

[14] Even before the restriction enzymes were discovered, there were numerous examples in nature of gene transfer between species. Many viral infections of bacteria, plants, and animals require that the genes of the virus be spliced onto the genes of the host cell on infection, and out of the infected cells on release of the virus. Often host genes are carried out from one host by viruses capable of infecting another. A plant globin gene has since been identified in nitrogen fixing plants whose functioning genetic code as well as non-functioning intervening code sequences are identical to animal globin, which demonstrates, in a most ancient example, evolution accommodating gene transfer between two higher organisms. It may be argued that a very large number of gene exchanges are possible, too many to expect that any gene combination a scientist might produce has already occurred in nature. But this is now a quantitative argument of how often it occurs, rather than an argument that, absent our laboratories, recombination would never occur. We live in a planet where lite is very ancient, so that an astronomical number of genetic recombinations will have time to occur over the course of a billion and a half years of evolution, and this implies that the random probability of deleterious exchanges (that is, of the accidentally cataclysmic kind feared by Chargaff) must be vanishingly low.

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not watch themselves, they will always opt for the worst possible scenario."[15]

No apocalypse

Enough time has passed to state that no catastrophe was truly imminent at the time of the great controversies (leaving aside speculation that the course of history will eventually provide the predicted disaster). It is therefore appropriate to ask how the Cassandras of genetic disaster came to be so wrong in their expectations, and what else might have alarmed and misled them.

Fear and hostility toward science and technology were rampant in the United States at the time of the recombinant DNA debate, and in the pronouncements (and presumably the minds) of the alarmists there was a fusion of fears: fear of nuclear wastes, fear of chemical pollution of the earth and its atmosphere, and fear of evil, ambitious, and self-serving scientists and doctors. These led to the numerous apocalyptic predictions and distortions of judgment that only fear and hostility can promote. During the same period we were told by responsible committees and observers that there would be worldwide famine by 1975, that the majority of cancers was caused by pollution, that the ozone layer of the atmosphere would disappear, and that we would never again have enough petroleum. Each of these predictions was false. I would not characterize all predictions of holocaust and cataclysm as psychological distortions of judgment, but in hindsight these clearly were.

Many of the strongest opponents of recombinant DNA studies —such as Jon Beckwith, George Wald, and the Science for the People organization—were already firmly established in the intellectual American left. The militant environmentalists who continued to oppose the research after 1978 find their roots and support in the same political outlook. Coming as they do from the political left, their arguments and proposals rest on two premises. The first is that governmental control (by the right government) is progressive and will serve the interests of "the people." The second—a profoundly conservative belief that underlies much of the American left's approach to technology—is summed up in the words of M.B. Williams: "Damage resulting from natural processes which humans might have prevented is morally preferable to damage

[15] J.D. Watson, *Washington Post* (May 14, 1978).

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resulting from human action."[16] This second premise stands in opposition to a pragmatic weighing of costs and benefits; subscribers to it will feel perfectly justified in magnifying potential dangers and ignoring potential benefits. Daniel Callahan argued the point this way: "There might be a loss to human progress if the research is not pursued, but it is difficult to see how there could be a claim that a failure to pursue the research would be in itself immoral . . . it is *our* lives which may be gambled with . . . *our* decision to make."[17] Of course, there is no logical basis for preferring one kind of damage or loss to another, and there is no justification for the moral superiority Callahan and others arrogate to themselves. (The argument, however, is especially compatible with the temperament of the American left, which views science and technology as aspects of American society that are antithetical to its interests and philosophy, and which despairs of all benefits, and detects all manner of dangers, in science.)

If we take the arguments of those who would have restricted DNA experiments as predictions of what would happen if the research were to proceed, the predictions were uniformly wrong—not only about the dangers involved, but also about the uses of the research results. There was the charge that DNA research would lead to genetic stigmatization for political purposes, and that genetics research would divert funds and attention from true health needs. Yet the first human genetic disorder diagnosed by recombinant DNA methods was sickle cell anemia, which is found mainly among blacks, and which can be diagnosed *in utero* only by DNA technology. These findings are now universally considered a welcome clinical advance. There is no one to my knowledge who has raised the issue of "stigmatization" with regard to this or other genetic diseases (mainly hematologic and immunologic disorders) which are now being diagnosed by these techniques.

And the contribution of science and medical technology to the health of the American people over the past fifty years can hardly be questioned. The problems for which scientific advances have proved crucial could not have been solved by redistribution of care or environmental manipulation; rather, these advances depended on a sympathetic political and economic climate for basic

[16] M.B. Williams, "Ethical theories underlying the recombinant DNA controversy," in *Recombinant DNA: Science Ethics and Politics*, ed., J. Richards (New York: Academic Press, 1978) pp. 177-190.
[17] D. Callahan, "Ethical prerequisites for examining biological research: the case of recombinant DNA," in *Recombinant DNA: Science Ethics and Politics*, ed., J. Richards, pp. 135-148.

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research. The long delay between the discovery of penicillin in the 1920s and its application to human disease in the 1940s is largely attributable to the withering away of medical research during the Great Depression. The eradication of polio depended on live virus research during the 1950s that might have been discouraged in today's political environment; in which case, it has been said, we might now have hundreds of thousands of well-functioning, miniaturized iron lungs instead of an eradicated disease.

The costs to scientific progress of a prolonged moratorium only become evident if a moratorium is unsuccessful, or when it ends. Had the moratorium of 1974-75 been made permanent, either voluntarily or by legislative fiat, the cost would have been the loss of the medical benefits we now enjoy. These are most impressive: They include new diagnostic methods and investigative techniques in medicine and agriculture; new availability in large quantities of biological products such as interferon and certain human hormones; and non-infective viral proteins for use as vaccines. Moreover, the potential application of this technology to virtually every area of biology, medicine, and agriculture seems even more promising now than then.

Should we regulate the future?

If it is made into an ethical principle, the belief in popular (or governmental) control over all scientific activity can undermine a realistic assessment of how much control can actually be exercised. The degree to which prohibited activities will escape all controls may be underestimated, and the ability of scientific research to proceed in the face of controls and moratoria will be overestimated.

When Congress considered new laws regulating DNA research, the legislative remedies all consisted of regulations on the conduct of experiments and reporting requirements, at the very minimum extending the recently enacted NIH guidelines to research activity not supported by NIH. It is hard to imagine rules such as these protecting us against the risk that somewhere in the world someone will conduct an experiment that will destroy us all. After all, the materials and equipment needed to set up such experiments on a small scale are very modest (perhaps $150,000 startup costs, $100,000 yearly expenses, and two persons working full-time). The international multibillion-dollar traffic in illicit drugs is testimony to the impossibility of complete regulation of the genetic recombination technology, since such technology also has enor-

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mous commercial appeal and ready availability of materials and knowledge.

From a certain point of view, however, legislative and administrative regulation seemed a compelling necessity in 1977, and the agonized protests of scientists in the field seemed foolish. During that year a legislative aide to a congressional subcommittee on Health and the Environment, expecting legislative regulation to prevail, described the scientists' response to proposed legislation in this way:

> Nevertheless, the greatest fear response exhibited by any group came from the scientists as soon as legislation was proposed. It was particularly frustrating for me to deal with a barrage of protests so fraught with a nearly total lack of understanding of administrative law, often a lack of knowledge of the content of particular bills and a failure to distinguish between the various House and Senate bills. The extent to which bills are misunderstood, misinterpreted and false conclusions drawn from them was unbelievable.
>
> . . . The most offensive features of this reaction of scientists was not their initial ignorance and naivity—that can be forgiven—but their subsequent refusal to learn. Numerous briefings were held and memoranda written to explain in detail how each section of the House bill should be interpreted, but a significant segment of the scientific establishment resolutely held steadfast to their misconceptions and false conclusions. This was something worse than hubris and basically unforgivable. . . .
>
> . . . one must conclude that this was purely an instinctive, emotional and defensive response to fear. . . . But fear of what? How could the mere extension of safety standards by law pose such a threat?
>
> Clearly, if the purpose and content of legislation had been understood in the first place, it wouldn't have been perceived as a threat at all. But since it was somehow regarded as control of the content of scientific research, where scientists were to be sent to jail for forgetting to plug a pipette, no wonder such a frozen state of emotional intransigence resulted.[18]

But from another point of view, the fears that were truly unreasonable were the fears of imminent genetic catastrophe. The scientists were engaging in political debate and a lobbying effort that was well within the American tradition, and which was ultimately successful. The worst thing that could have happened in 1977, from their viewpoint (and, I believe, from the viewpoint of the public interest), was for legislation to be enacted. No matter how carefully worded, by its very existence legislation would have

[18] B.K. Zimmerman, "Beyond recombinant DNA—Two views of the future," in *Recombinant DNA: Science Ethics and Politics*, ed., J. Richards, pp. 273-301.

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been a triumph for the cataclysmic fears and the political ideology of the left.

The scientists did not fear the NIH guidelines, which were more easily subject to modification as new knowledge developed, whereas modifying legislation is a more cumbersome process. Legislation would have reified the existing guidelines just at the point when they seemed less and less scientifically justifiable. In succeeding years the NIH guidelines have gradually eased on the basis of the scientific knowledge developed since the original concerns came up. In 1981, the NIH Director's recombinant DNA advisory committee recommended that virtually all the remaining *requirements* be converted to *recommendations*, since federal controls no longer seemed necessary.

Yet because of the existing regulatory burdens of the NIH guidelines, there still may be hidden costs that we are in fact now paying. No American university or hospital committee has seen fit to approve a human gene-transplantation experiment. The only scientist known to have attempted this was severely censured, and suffered loss of grant support for violating NIH guidelines.[19] The clinical trials have been described as unduly heroic and unjustifiably premature, but not as having endangered the two terminally-ill patients who participated. Since the guidelines existed as official policy, it was wrong to violate them, but his censure may prevent him or other like-minded physicians from in fact making a breakthrough. Absent the NIH regulations, the experiment might still have been criticized, but trials of this kind might not have been so effectively inhibited.

The art of scientific discovery

The nature of scientific creativity is such that the effects of a moratorium or overly-strict regulation can be devastating, and not quickly reversed. Science, like the arts, intensely absorbs the individual. The creative agonies in science—with its manic-depressive extremes of elation and depression, and the very immediate and personal rewards for scientific achievement—are much like those in the arts. For virtually all scientists who have made great discoveries, there are a few good years of great activity during which

[19] G.B. Kolata and N. Wade, "Human gene treatment stirs new debate," *Science* 210 (1980): 407; N. Wade, "UCLA gene therapy racked by friendly fire," *Science* 210 (1980): 509-511; N. Wade, "Gene therapy caught in more entanglements," *Science* 212 (1981): 24-25.

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most of their important work is done; later they create mainly through their younger colleagues. To forbid a scientist those early years is to ruin the work of a lifetime. What Beckwith and his colleagues gave up in their moratorium is something of great personal value to a scientist, and is not easily yielded.

Consider the resistance to censorship of artists in totalitarian countries. Some of them manage to continue, but art does not flourish. Like the arts, genetic research and thought have been under severe political pressure during much of this century. The triumph of environment over genetics—as embodied in the suppression of Mendelian genetics and the stranglehold of Lysenko—was proclaimed as official Soviet dogma during the time of Stalin. Lysenko's role was not weakened until after the ouster of Khruschev. As a result, agricultural breeding efforts, which should have been cut and dried scientific experiments, were uniformly unsuccessful, and the Green Revolution began elsewhere. Soviet scientists are still struggling to overcome this lag in genetics. Nazism, whose ideology was a perversion of genetic and evolutionary science, has led to an intellectual inability to confront human genetic diversity today, and so contributed to anti-scientific movements against human genetics.

A retrospective judgment

In the light of our current knowledge, the moratorium of 1974-75 and the regulatory mechanism that emerged afterwards can be seen as successful and sober responses to nature and to political realities. The moratorium may have been the product of apocalyptic fears, but it did give rise to a careful judgment of the possible environmental hazards. The scientists involved managed to find a way to avoid paralyzing an important human endeavor, and through their irreproachably responsible actions managed to maintain public confidence in their activities. The bureaucratic structure set up by the U.S. government through the NIH regulations was successful in developing a scientific consensus, involving the public, and capable of being modified with great flexibility in response to new scientific findings. On the other hand, the radical opposition to recombinant DNA research should be judged harshly for the political agenda behind its ostensibly environmental concerns, and for its gross failure to evaluate correctly the actual dangers and benefits of recombinant DNA research.

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The science and politics of cyclamate

WILLIAM R. HAVENDER

Most of us pay little attention to the body of Federal law that governs the safety of our food supply. This is because these laws function smoothly and harmoniously most of the time. However, there is one portion of these regulations—the Delaney clause of the Food, Drug, and Cosmetic Act—that is repeatedly in the news, and is, it seems, constantly coming up against hard cases.[1]

It is received wisdom among most specialists and the general public that this clause is a special source of trouble, the repeal of which would simplify the production of diet pop, hot dogs, and bacon. There is good reason for this view, since the Delaney clause did play a central role in several unpopular decisions of the Food and Drug Administration (FDA), such as the 1969 ban on cyclamate, and the abortive attempts to ban saccharin and nitrite. Most

[1] Section 409 of the Federal Food, Drug, and Cosmetic Act reads, in part, that a food additive petition shall not be issued if a fair evaluation of the data "fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: Provided, that no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal . . ." The phrase preceding the colon is the "general safety" clause; that which follows is the Delaney clause.

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of the public debate has focused on how the Delaney clause ties the hands of the FDA, not permitting it leeway to judge the appropriate human risk to be inferred from animal cancer tests, nor the discretion to weigh a very substantial health benefit against a slight or hypothetical cancer risk (for instance, nitrite prevents botulism).

But Peter Hutt, FDA chief counsel from 1971 to 1975, has long argued that the Delaney clause is redundant: that the FDA is already legally empowered by the "general safety" clause to take any action sanctioned by Delaney. However, this has not traditionally been the FDA's own interpretation of its legal mandate. In the past, the FDA has usually argued that Delaney demanded a far more stringent regulatory response to cancer findings than did the general safety clause: that, absent Delaney, weak or merely suggestive indications of carcinogenicity would not by themselves necessarily compel a ban, and the benefits of an additive could still be balanced against its risks. But a recent decision shows that the FDA has now changed its views, and that the general safety clause may prove a greater source of trouble than the Delaney clause.

In September 1980 the FDA formally denied Abbott Laboratories' 1973 petition for the reapproval of cyclamate. Especially notable about this decision is that, while the question of cancer was the principal ground for the denial, the Delaney clause was explicitly *not* invoked.[2] Instead, the FDA relied exclusively on a new and expansive interpretation of the general safety clause. This decision thus established an ambitious precedent that may guide future decisions on food additives—for instance, when the ban moratorium on saccharin runs out on August 14, 1983—and so is worth examining in some detail.

A cyclamate primer

Cyclamate is a chemical with thirty times the sweetening power of sugar but with none of the calories. (The plural form that is sometimes used—cyclamates—refers simply to the various salts of

[2] A secondary ground was the alleged mutagenicity of cyclamate. These experiments will not be discussed in detail here. But their interpretation does express the same attitude toward the use of scientific data that will be documented here concerning carcinogenicity. In particular, not a single study decisively demonstrated that cyclamate is mutagenic, although a few were "suggestive." The role that "suggestive" results played in this decision will be made clear in the discussion of cancer.

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cyclamic acid, such as sodium cyclamate and calcium cyclamate). It was discovered in 1937 by Michael Sweda, a chemist then working for Du Pont, which licensed the substance to Abbott Laboratories. Cyclamate has two useful properties: It lacks the bitter aftertaste of saccharin, and it synergizes with saccharin so that a mixture of the two tastes sweeter than their simple sum. The optimal product was found to be a 10:1 cyclamate/saccharin mixture (hereafter referred to as the "10:1 mix"), in which each component contributed about half of the final sweetening power. This mix was introduced in 1953 and soon dominated the diet food industry.

In 1959, cyclamate and saccharin were classified "Generally Recognized As Safe" (GRAS) by the FDA under the Food Additive Amendment of 1958. This classification was based on animal studies and human experience with each sweetener separately. In order to evaluate the safety of the combination of the two substances, Abbott commissioned a rat feeding study on the 10:1 mix to be conducted by Food and Drug Laboratories (FDRL) under the direction of Dr. Bernard Oser. (This laboratory is not connected with the FDA despite the similarity in names.)

Toward the end of this two-year study, another researcher reported that cholesterol pellets impregnated with cyclamate and surgically implanted in the bladders of rats caused much higher tumor incidence than cholesterol pellets did alone. The relevance to human oral intake of this method of administration was obscure (and indeed, such experiments have never been taken as indicative of human risk). But this finding caused Abbott to ensure that the animals in the FDRL study were examined for bladder cancer during, and at the termination of, the experiment. In early October 1969, before all the histological examinations had been completed, Abbott promptly communicated to the FDA partial results that indicated the presence of bladder tumors. A group of pathologists convened by the FDA confirmed these diagnoses. The final test result was that twelve of the seventy rats that had received the highest dose (5 percent of the diet) were found to have incipient bladder cancer, while none of the undosed (control) animals did. This difference was statistically significant.

Within a week of Abbott's notification, the FDA called a press conference and, citing the Delaney clause, announced it was removing cyclamate from the GRAS list and banning its use in general purpose foods and non-prescription drugs. Eleven months later its use in flavoring prescription drugs was also stopped. In 1973, Abbott petitioned the FDA to have cyclamate reapproved on the

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basis of new studies. After many exchanges, the FDA issued its final decision on September 16, 1980. Just this past fall Abbott submitted a new petition for the approval of cyclamate; this petition is currently under review, but a decision is not expected before the spring of 1983.

Irregular statistics: (I) lack of replicability

In choosing not to cite the Delaney clause in this case, and instead reinterpreting its mandate under the general safety provision, the FDA decided that cyclamate, like Caesar's wife, would have to be above all suspicion. This stance allowed the FDA unprecedented license to rummage through the vast array of data now available about cyclamate, finding bits of evidence here and there, none of it secure enough to support a determination of carcinogenicity under the Delaney clause, but sufficient to raise "questions" under the general safety clause. Inherent in such a stance was the temptation to be capricious in the interpretation of the data, a temptation the FDA did not avoid. Three instances stand out.

One irregularity was the unsound way in which the FDA handled the normal scientific requirement that an experimental result be shown to be replicable before being accepted as valid. To be sure, there was a difficult regulatory decision to be taken in 1969, when it was first reported that the 10:1 mix induced bladder cancer in rats. Even though these tumors were minute (most were only visible microscopically) and had no significant deleterious effects on the health of the affected animals, the fact that tumorigenic activity was seen at all was understandably alarming, given the wide use of artificial sweeteners. Besides, saccharin could still be used by those—chiefly diabetics and dieters—who had a true health need for a non-nutritive sweetener.[3] So the policy choice was largely between improved palatability on the one hand, and a widespread potential health hazard on the other.[4] And deciding to withhold judgment pending replication of the tumor findings would mean waiting at least two years more, during which time public ex-

[3] It was conceivable, of course, that the tumors were induced by the saccharin in the mix (or impurities). But cyclamate was clearly the main component, and saccharin had evidently been used safely for decades. It was not unreasonable, therefore, that suspicion focused mainly on cyclamate.

[4] Manufacturers' costs were not considered, but they were quite high. Estimates of lost inventories were in excess of $100 million (see editorial, *Barrons*, October 7, 1974). A lawsuit brought against the government for $23 million by the California Canners and Growers Association for losses suffered as a result of the sudden ban is before the courts now, and a decision is expected soon.

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posure would continue. Therefore, one can understand the decision taken in 1969 to withdraw cyclamate from the market, even in the absence of any independent verification of the tumor findings.

But the implementation of this ban stimulated a large number of supplementary animal tests to confirm the original report of bladder tumors. These newer results included ten experiments on rats, seven on mice, one on hamsters, one on beagles, and two on monkeys. Among the rat studies, two were conducted on the 10:1 mix (and hence directly attempted to reproduce the FDRL test), five were on cyclamate itself, and three were on cyclohexylamine (the principal metabolite of cyclamate produced in the body, hereafter called CHA). All of these were high-dose, long-term feeding studies, and none produced a statistically significant incidence of bladder tumors.

Ordinarily in science, the inability to repeat a singular result, despite a sustained and deliberate effort, should lead to a judgment that the initial finding was wrong. Things are not that simple in the regulatory world, however. There *were* a few odd bladder tumors scattered among the treated rats in these newer tests, but not enough to establish statistical significance within any single experiment. Yet instead of viewing these tests as several independent confirmations of cyclamate's *lack* of carcinogenicity—which scientists would normally do, and which they would interpret as strong exoneration—the FDA lumped together the various negative tests involving the same strain of rats. Then they did a statistical analysis, *not* against the lumped control animals from the corresponding tests (which still would not have yielded a statistically significant result), but against the average "spontaneous" incidence of bladder tumors based on "historical" data derived from experiments carried out under other conditions at other times and in other laboratories. By these means statistical "significance," of a sort, was achieved for the *three* bladder tumors seen among the more than 400 treated animals in the three tests involving Sprague-Dawley rats, and as it was for the three tumors seen in the more than 200 treated rats in the two studies on Wistar rats.

Now the unreliability of this procedure owes to the fact that the occurrence of spontaneous tumors in test animals is not fixed but varies from experiment to experiment, from time to time, and from laboratory to laboratory.[5] Sometimes this variability can be traced

[5] Task Force of Past Presidents of the Society of Toxicology, "Animal Data in Hazard Evaluation: Paths and Pitfalls," *Fundamental and Applied Toxicology* 2 (July, 1982): 103-104.

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to identifiable differences in the maintenance conditions of the animals (such as differences in the feed, or the drinking water, or whether animals were caged individually or in groups), or to differences in the thoroughness of the search for tumors (whether or not the bladders were inflated after autopsy, or whether they were scrutinized microscopically rather than merely scanned visually). Often, however, this variability is unexplained. To avoid biases and inaccuracies that these uncontrolled influences can introduce, careful experimental design requires that dosed and undosed animals be kept in the same laboratory under identical treatment conditions, that the animals be randomly assigned to the treated and untreated groups, and that they be examined for tumors by uniform procedures. Without such care to eliminate (or at least even out) the possible influence of extraneous factors, there is no way to know if the "historical" spontaneous incidence can be used validly as the standard against which to compare the dosed animals in these specific experiments. Hence, the results of such a statistical analysis, however "significant," can easily be spurious.

The FDA was not unaware of the vulnerable nature of this analysis, which is why the agency did not invoke the Delaney clause on the basis of these "significant" incidences. Under its new "Caesar's wife" reading of the general safety provision, however, it no longer needed to. All that was needed was for a "question" to be raised, and the FDA considered this analysis, however inherently suspect and deviant from the proper statistical comparison with the simultaneously-run controls, to be ample for this purpose. Specifically, the FDA concluded that "the lack of a statistically significant effect in each of these studies when considered alone does not rebut the question about cyclamate's safety raised by the comparison between the combined incidence of bladder tumors found in cyclamate treated Sprague-Dawley and Wistar rats and the background rate for such tumors based on historical data."[6] So it was that the FDA, by a statistical sleight-of-hand, converted five clearly negative and mutually reinforcing studies into five experiments that "raised a question about cyclamate's safety."

The statistical background

The second irregularity in the FDA's analysis of the cyclamate data concerns the science of statistical hypothesis testing. To under-

[6] J. Goyan, "Cyclamate (Cyclamic Acid, Calcium Cyclamate, and Sodium Cyclamate): Commissioner's Decision," *Federal Register* 45, Number 181 (September 16, 1980): 61491.

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stand the import of the FDA's radical deviation from normal practice, a brief detour into this science will prove helpful. The usual point of departure in statistically evaluating an animal cancer test is to see whether or not a true "treatment effect" exists. After all, even if a chemical is not a carcinogen, tumors often occur spontaneously (particularly in aged animals), and there is a small assortive chance that most of the animals that are fated to develop spontaneous tumors will be placed in the dosed groups, thus making the tested chemical look like a carcinogen when it is not. Statistical tables give the exact probability that such an extreme outcome might come about purely by chance. This probability has a technical name: the "p-value." The lower the p-value of an experimental outcome, the more unlikely it is that the result could have been obtained just by chance. Only when an apparently carcinogenic result is highly unlikely by assortative chance—when the p-value is very low—does one accept the result as "significant" in the statistical sense.

One must, of course, adopt some precise and uniform rule for deciding when a p-value is low enough to be called significant. Very commonly in cancer testing (and in many other experimental situations) this cutoff value is set as $p \leq .05$ (on a scale ranging from 0 to 1). This means that we only accept results that have a 5 percent probability (or less) of occurring simply by assortative chance.

There are strong reasons for not choosing values that are very much higher or very much lower than this. To begin with, note that choosing this value as the decision boundary means that, on the average, there is no more than one chance in twenty that, were the chemical under test truly a non-carcinogen, one would obtain a result that would mistakenly lead one to judge it to be a carcinogen. (This is a useful way to view it: Were the test on the non-carcinogen repeated twenty times, we would expect to classify the substance, falsely, as a carcinogen no more than once). But the obverse is also true: One *would* anticipate making that mistake on as many as 5 percent of the non-carcinogens.[7] If one set the decision boundary higher (say, $p \leq .10$) then one would expect as many as one in ten such experiments to lead to a false judgment of carcinogenicity. If one set the bound lower (say $p \leq$

[7] To see experimentally a false positive rate as high as 5 percent presupposes that enough spontaneous tumors do in fact arise that they *could* be assorted by chance across dose groups in patterns suggestive of carcinogenicity having p-values $\leq .05$. This is not, however, a very restrictive presupposition for cancer bioassays that run for the natural lifetime of the test animals. It is com-

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.01) then as many as one in a hundred such tests would be expected to lead to a false judgment of carcinogenicity. (Such wrong judgments are termed "false positives.") The decision bound one chooses, then, limits the fraction of non-carcinogens that might be judged as false positives.

But saying that an experimental result meets our $p \leq .05$ criterion is *not* equivalent to saying that the result has at least a 95 percent chance of being true (i.e., that 19 out of 20 such positive judgments would be valid on average). For example, if all of a group of chemicals under test were, in fact, non-carcinogens, then *every* judgment of carcinogenicity would be incorrect (even though no more than 5 percent of the group would be so judged), while if the group consisted only of carcinogens, then every judgment of carcinogenicity would be correct. Thus, looking only at the *subgroup* of chemicals that *have* been judged to be carcinogens by the $p \leq .05$ rule, the fraction of these that will be false positives can range from 0 to 100 percent, depending on the *true* frequency of carcinogens in the group of chemicals under test. This is an *extremely* common mistake in the interpretation of p-values.

Suppose we have a situation where there is one true carcinogen among a group of 100 chemicals selected for testing. (This is not unrealistic, since it has long been an article of faith that carcinogenicity is a fairly rare property of chemicals.) Our animal test would presumably detect the one true carcinogen. But in addition, our $p \leq .05$ decision rule would expectedly lead to as many as 5 percent of the 99 non-carcinogens (or about five of them) being falsely judged to be carcinogens. Of the six positive results, then, five would be false. If the true frequency of carcinogens were instead twenty among the 100 chemicals being tested, then one would presumably correctly identify these twenty (assuming there are no false negatives), but in addition, as many as 5 percent of the eighty non-carcinogens (or four) would also be judged to be carcinogens. Here, only four among 24 positive judgments would be false. Yet if the true frequency of carcinogens were one among 1000 tested chemicals, then the number of positive judgments could be as high

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mon in aged animals for the spontaneous tumor incidence of at least one tissue site to be high enough to generate an expectation of false positive results on the order of 5 percent. For the expected false positive rates for rat and mouse strains used in the NCI/NTP cancer bioassay series see T.R. Fears, R.E. Tarone, and K.C. Chu, "False-Positive and False-Negative Rates for Carcinogenicity Screens," *Cancer Research* 37 (1977): 1941-1945; and J.J. Gart, K.C. Chu, and R.E. Tarone, "Statistical Issues in Interpretation of Cronic Bioassay Tests for Carcinogenicity," *Journal of the National Cancer Institute* 62 (1979): 957-974.

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as 51, of which fifty would be false. Thus, *the fraction of positive judgments that are false can be very large when the true frequency of carcinogens in a group of tested chemicals is much lower than the p-value chosen as the decision boundary.*

Stated another way, as the proportion of true carcinogens declines, the chance of falsely judging carcinogenicity increases (for any given decision boundary). This also means that, for a given true incidence of carcinogens, raising the decision bound increases very rapidly the proportion of false positives among all positive judgments. Limiting these wrong judgments so that the true carcinogens are not swamped with false positives is a compelling reason why scientists do not usually use decision bounds much higher than $p \leq .05$ in animal cancer tests.

Of course, there is a danger of making the opposite sort of mistake, of concluding that a chemical is not a carcinogen when in fact it is (for example, if the animals that would develop spontaneous tumors ended up by chance in the undosed group, so that the proportion of *induced* tumors in the dosed animals showed no or very little increase over the undosed animals). This is called a false negative. If one were only concerned with false negatives, the decision boundary could not be set too high. But a balance must be struck, recognizing that the consequences of a false negative in a cancer test can be serious (because a carcinogen might be ingested by millions of consumers), but that the consequences of a high proportion of false positives can also be serious (because the economy would be hurt by the frequent, sudden banning of widely useful chemicals). The decision bound that is generally viewed as striking the best balance between these two opposing sorts of error, and which is currently predominant in the field of animal cancer testing, is $p \leq .05$. (This is the practice adopted, for example, by the government in its own large animal cancer testing program, which is carried out by the National Cancer Institute/National Toxicology Program (NCI/NTP).)

(II) Statistical boundaries

This should make clear the severe problems with FDA Commissioner Jere Goyan's decision to relax this standard decision bound in the cyclamate tests. Commissioner Goyan reasoned that an experimental result with a p-value of exactly .05 (which would just be significant by the usual criterion) is not really all that different from one with a p-value of .06 (which would just miss be-

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ing considered statistically significant), and hence the latter should not be discounted merely because of the arbitrariness of a statistical rule. It is true, of course, that a result with $p = .06$ is hardly different from one with $p = .05$. But the problem with this argument is that there is no logical stopping point. And, in fact, Goyan did not stop. He rummaged through the data, discovering result after result with p-values greater than .05 which he interpreted to be "significant," undaunted even by a rat study with a very few bladder tumors in which the p-value was .2. (That is, even if there were no true carcinogenic effect, a result as extreme as this one would show up one time in five purely by chance.) Thus, in response to Abbott's contention that this study, which was not nearly significant at the $p \leq .05$ cutoff point, should be counted as a negative, Goyan wrote in his decision: "I disagree. The total tumor incidence in this study is significant at the $p = .2$ level. There is thus an 80 percent chance that the results of [this] study are due to cyclamate instead of a 95 percent probability necessary for statistical significance at the $p \leq .05$ level . . . I do not consider these results to be negative . . . the study cannot be considered proof of safety and indeed raises a question as to the potential carcinogenicity of cyclamate." (Here Commissioner Goyan makes the common mistake in interpreting p-values.) Once again, a study that would be clearly negative by normal criteria had been alchemically converted into its opposite: one that "raised a question" about cyclamate's carcinogenicity.

Perhaps what is most unsettling here is the thought that the FDA may intend in the future to accept as "significant" p-values as high as .2. For this rule would greatly increase the number of tested substances judged to be carcinogens, subjecting them to a ban or other stringent regulation. And if true carcinogens are as relatively rare as scientists believe, then a large fraction—perhaps a majority—of these supposed carcinogens will be falsely so identified. To most people, this would be carrying "prudence" rather far.

Such a thoroughgoing revision of statistical methodology might be expected to excite some remark from the statistics profession, and in fact it did. A letter in reference to the cyclamate decision was sent to the Commissioner of the FDA from C.R. Buncher, Chairperson of the Executive Committee of the Biopharmaceutical Section of the American Statistical Association, and Professor of Epidemiology and Biostatistics at the University of Cincinnati. This letter reads in part:

. . . we are concerned about the extreme misrepresentation of our pro-

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> fessional methodology. . . . Many of the published statements are profoundly fallacious. . . . The concept expressed [concerning the interpretation of p-values] is foreign to everything that is taught in the statistics profession. . . . We strongly encourage you to have the appropriate professionals prepare a new statement that correctly expresses the statistical principles that are involved in this issue. This new statement is needed to avoid the ridicule of knowledgeable scientists. . . . WE BELIEVE THAT A REVISION MUST BE PUBLISHED IN THE FEDERAL REGISTER AS A CORRECTION.

No such correction has yet been published.

(III) Unreasonable "sensitivity"

The third instance of the FDA's irregular use of statistics is the plaint, oft-repeated by the Commissioner in this decision, about the lack of "statistical sensitivity" in the animal studies under review. Time after time a calculation was offered that showed that studies of the size that were used had only a 50 percent chance of detecting at the $p \leq .05$ level a true difference of X (where X varied from a few percent up to some 30 percent, depending on the number of animals in the experiment). What this meant was that with the finite number of animals in any single experiment, one stood a fair chance of missing "small" carcinogenic effects entirely, and the smaller the experiment, the larger the effects that might be missed.

It would be perfectly reasonable to raise this objection if an experiment used an unusually small number of animals. But only two or three of the many cyclamate tests did so; the great majority were of a size comparable to, or larger than, the original FDRL study that had produced the first (and only) finding of bladder cancer (and hence, were statistically capable of contradicting it). They were also comparable in size to the exemplary NCI/NTP animal cancer test series, which seldom uses group sizes larger than fifty.

To be sure, such a group size has a 50 percent chance of detecting a tumor incidence at the $p \leq .05$ level only if the true incidence is as large as 8 or 9 percent, and hence stands a fair chance of missing lower incidences. But this is a general problem with animal cancer testing, not something unique to the cyclamate tests; besides, this limited statistical sensitivity is precisely why enormous doses far exceeding normal human exposure are used. The 5 percent dietary dose, for example, which is the typical maximal dose used in cyclamate studies, corresponds to hundreds of bottles of diet pop

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daily, and this is maintained over the entire post-weaning lifetime of the animals. This huge dose is a giant precautionary factor *already* introduced into such experiments expressly to compensate for the limited numbers of animals that can be used in a routine test.

An example of the FDA's capriciousness is their treatment of one of the largest of the rat studies on cyclamate, carried out in Germany. Actually, three feeding studies were performed, one each on cyclamate, the 10:1 mix, and CHA. Only one bladder tumor was seen among the 208 animals dosed with cyclamate, none in the 208 treated with the 10:1 mix, none in the 104 animals treated with CHA, and none in the 104 controls. How did the FDA evaluate this outcome? Commissioner Goyan wrote: ". . . the occurrence of a bladder tumor in [this] study is consistent with a small treatment effect, even though it is not significant at the $p \leq .05$ level. . . . Accordingly, I cannot consider [this] study to be proof of cyclamate's safety." [8]

What sort of study *would* the FDA consider of adequate statistical sensitivity to rebut the "question" of cancer hazard raised by the occasional tumors seen in these tests? Commissioner Goyan again: "In the case of cyclamate, it is certainly possible that further adequate testing, such as the study proposed by the Temporary Committee, could resolve the current questions about cyclamate's possible carcinogenicity.[9] If such testing is done, it may yet be possible for FDA to conclude that there is a reasonable certainty that cyclamates does not cause cancer."

On the face of it this sounds like a reasonable stance, but it is instructive to see what lies behind the words. For what the Temporary Committee had discussed (not "proposed") was an idealized study with no limits on cost and technical resources, and with the following features: It should be large enough to have a 95 percent chance at the $p \leq .05$ level of detecting a 1 percent difference in incidence within each dose group, and should consist of both sexes of two species that would be tested with at least three doses, in addition to the controls. This would require 51,968 animals, and

[8] Commissioner Goyan gave the historical incidence of bladder tumors in this strain of rats (Sprague-Dawley) as .23 percent, that is, 2.3 per thousand rats. Thus, seeing about one such tumor among the 624 rats in this test would be expected. The probability that a bladder tumor, given that one occurs at all, would be found in a dosed animal rather than a control animal, is simply $520/624 = 5/6 = .833$, that is, $p = .833$. Here, the Commissioner treated a result with a p-value greater than .8 as of sufficient weight to invalidate counting this study as a negative.

[9] This was a committee set up by the National Cancer Institute to review the available cyclamate studies. Its report was issued in 1976.

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if allowance were made for a possible 50 percent premature mortality rate—animals often die well before the end of a two year experiment from non-cancerous causes, and so never get old enough to be at risk of developing bladder cancer—then twice this number of animals would be needed to start the experiment.[10] So say 100,000 animals: Currently, such tests cost about $1000 an animal, which means an expenditure of $100 million, a sum most people would consider better spent on researching a *cure* for cancer. (Moreover, the largest animal study ever done—and this was very much an exceptional case—involved 24,000 mice and required an unprecedented logistical effort to carry out.[11]) Such a study is obviously impossible.

These three instances of the FDA's posture towards the cyclamate evidence by no means exhaust (but do accurately exemplify) the scientific curiosities in this decision. Suffice it to say that there are other results the FDA finds suggestive though not conclusive, but nonetheless—or rather, given its new interpretation of the general safety provision, therefore—sufficient to deny Abbott's petition. The statistical and biological significance of these depends on such technicalities (which you need not understand) as whether or not one can validly apply the Armitage test for linear trend to groups with N less than five, or whether the Bonferroni multiplier should be applied to the calculated p-values, or how tumors should be grouped for statistical analysis (liver tumors together with lung tumors? all lymphosarcomas together or only those seen in selected organs? all tumors of all kinds seen in the test?), or whether different generations within one experiment should be grouped together rather than analyzed separately, and so on. The evidence on which the 1980 cyclamate ban is based, far from being solid, is a stew of shifting, unreproduceable, and ephemeral "findings" all embedded in a startlingly *ad hoc* interpretation of scientific methodology.

Discretion is a two-edged sword

The magnitude of the change in the FDA's implementation of food safety policy is shown by contrasting the FDA's postures in

[10] National Cancer Institute, Division of Cancer Cause and Prevention, *Report of the Temporary Committee for the Review of Data on Carcinogenicity of Cyclamate*, Appendix V (1976): 55-59.
[11] N.A. Littlefield, et al., "Effects of Dose and Time in a Long-Term, Low-Dose, Carcinogenesis Study," *Journal of Environmental Pathology and Toxicology* 3 (1980).

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the cyclamate case with the earlier saccharin and nitrite cases. The evidence for carcinogenicity in the case of saccharin, as weak as it is, is far more secure than it is for cyclamate.[12] Saccharin at least does replicably induce a small but statistically significant (at the $p \leq .05$ level) increase in non-lethal bladder tumors in second generation rats (i.e., rats whose dams were maximally dosed with saccharin throughout the conception, gestation, and nursing of their offspring). This has been shown three times, and there are no tests in which this effect has not been seen. An occasional tumor or two is seen in first generation rats as well, which could certainly be interpreted as being "consistent with a small treatment effect." Both of these features would be adequate under the new reading of the general safety clause to "raise a question" that, in the absence of a convincing rebuttal in the form of a mega-rodent test, would support a ban. This reasoning was not employed earlier; rather, the Delaney clause was invoked, and all public debate focused there. And as for nitrite, the fact that it forms a class of carcinogenic compounds called nitrosamines upon metabolism by the body could certainly be construed under the new policy as "raising a question." Again, this reasoning was not used earlier; instead, the Delaney clause was invoked.

This progression in policy, provided it stands, does make the Delaney clause entirely redundant (as Peter Hutt presciently foresaw), since any set of carcinogenic data strong enough to sustain a ban under Delaney would necessarily suffice to "raise a question" under the new interpretation of the general safety clause. In fact, one cannot envision a situation in which the FDA would have to rely *only* on Delaney to withhold approval in a future food additive decision. Those who have been urging Delaney's repeal have been outmaneuvered: For under the Delaney clause, the burden of proof at least was on those who made an affirmative declaration that a substance did cause cancer in animals. This need no longer be done. All that is needed now is a small reason to raise a suspicion that a substance *might* cause cancer, and then the burden of proof is on the petitioner to demonstrate that it does not. It is possible that one day we will look back on the Delaney clause with nostalgia.

Indeed, the critics of Delaney have been hoisted with their own petard. For it is the very "discretion" that was supposed to be a virtue of decision-making under the general safety clause—we were

[12] W.R. Havender, "Ruminations on a Rat: Saccharin and Human Risk," *Regulation* (March/April 1979): 17-24.

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told it would allow the agency leeway to weigh benefits against risks, and to take the exaggerated conditions of animal cancer tests into consideration when estimating human risks—that has permitted the FDA unexpectedly to revise its application of this provision in a much *more* stringent and unreasonable manner. Discretion, it seems, is a two-edged sword.

It is possible, however, that the FDA's new policy may not endure. Several features suggest that it will prove impossible to generalize. For one, a $100 million animal cancer test cannot generally be required of every petitioner seeking approval for a food additive about which skimpy doubts can be raised. For another, "creative" statistics will drown the agency with "carcinogens" needing regulation, a substantial fraction of which are probably wrongly so classified. A hint of what may be in store is given by the fact that precious few *foods* could withstand the scrutiny of the FDA's new policy. Sugar, for example, has caused a statistically significant incidence of tumors (at the $p \leq .05$ level) in at least one test,[13] as has pepper,[14] as has Vitamin D,[15] as has a mixture of egg yolks and milk.[16] Perhaps the toughest near-term test of the new policy will be the saccharin decision which is due next summer (if it is not postponed again). Currently, saccharin is the only artificial sweetener approved for use in soft drinks, so the public will no doubt protest vigorously against any attempt to use this policy to ban saccharin. If it turns out that the new FDA policy cannot be so generalized, then it is unlikely that the current cyclamate denial can stand, either.

The cyclamate episode clearly points up the softness of the wording of the general safety clause. The FDA nominally interpreted it as requiring a petitioner to supply "proof of a reasonable certainty that no harm will result from the proposed use of an additive," which sounds perfectly sensible. But there is no clear meaning about what "reasonable certainty" of "no harm" means in operational terms, or what rules should apply for reaching a judgment.

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[13] Hoffman Laroche Co., Ltd., "Tumorigenicity and Carcinogenicity Study with Xylitol in Long-Term Dietary Administration to Mice," Study Number HLR 25/77774 (January 30, 1978), prepared by Huntingdon Research Center, Huntingdon, Cambridgeshire, England. Available from the U.S. Food and Drug Administration, Rockville, Maryland.

[14] J.M. Concon, D.S. Newburg, and T.W. Swerczek, "Black Pepper (*Piper nigrum*): Evidence of Carcinogenicity," *Nutrition and Cancer* 1 (1979): 22-26.

[15] G.H. Gass and W.T. Alaben, "Preliminary Report on the Carcinogenic Dose Response Curve to Oral Vitamin D_2," *IRCS Medical Science* 5 (1977): 477.

[16] D. Nelson et al., "Hepatic Tumors in Rats Following Prolonged Ingestion of Milk and Egg Yolk," *Cancer Research* 14 (1954): 441-445.

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The cyclamate decision shows how unbounded these terms can be, particularly when "questions" and suspicions, rather than facts, are enough to deny a petition. That cyclamate has been extensively tested, and that no secure, repeatable finding of cancer has been established, would seem to supply, by any normal application of scientific inference, a "reasonable certainty" that no harm would result from the intended uses of cyclamate. But as we have seen, the FDA was not governed by normal scientific criteria. With so little constraint on what the FDA can conjure up to "raise a question," and with the burden of proof so one-sidedly placed on the petitioner, the potential for arbitrariness is great.

This decision, then, makes the need for reform urgently clear. With firm direction from the top, the FDA could reform itself, and it could do so without delay (for example, by repudiating these tactics in its evaluation of Abbott's 1982 petition). But even this sort of reform might not be sustained over time: The law on the books is clearly soft, so policy at the FDA is likely to go through wide swings as personnel and presidential administrations change. Only a change in the law—not merely the Delaney clause but the general safety clause as well—will be lasting.

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The new feminism and the world of work

RACHEL FLICK

ONE of the most elaborately organized lobbying efforts now underway is the campaign for a method of wage setting known as "comparable worth." Two independent organizations exist solely to advocate comparable worth, and it is a principle effort of at least ten others. A regular newsletter keeps activist readers abreast of every step in the campaign. Union leaders and feminists alike call it "the issue of the eighties for women." And these efforts have begun to bear fruit. The Democratic party endorses it; the Supreme Court has tentatively opened the door to it; and about 25 state and local governments have started to act on it. Its first federal hearings were held in September, 1982. In San Jose, California, it is now law.

Comparable worth purports to be anti-discriminatory. It responds to the "wage-gap"—the fact that the average woman earns only 59¢ for each dollar earned by the average man. The wage gap does not exist because women are paid less than men for doing *the same* work—this type of discrimination is forbidden by the Equal Pay Act of 1963, which requires that the sexes be paid the same wage "for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." Rather, it exists because women tend to take jobs different from those men take, and female-dominated occupations tend to be lower-paying. The argu-

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ment for comparable worth asserts that an employer who pays less for jobs in which women tend to dominate than for jobs in which men tend to dominate may in fact be discriminating against women. This is the case, they say, when the two jobs, even though they are very different, are of "equal value" to the employer.

The "value" of an employee, some of these lobbyists claim, can be measured scientifically. They believe that this value depends on the level of skill, effort, and responsibility that the job requires, and on the conditions in which the employee must work. With the help of consulting firms such as Hay Associates of Philadelphia and Norman P. Willis & Associates of Tacoma, Washington, comparable worth advocates have devised a method of "pure" job evaluation that assigns all occupations "points" in these four categories —a uniform rating system that theoretically makes possible comparison of the "measured job content" of disparate kinds of work.

For example, this method of evaluation allowed the city of San Jose to determine that its painters had approximately the same worth as its secretaries.[1] The work of painters and secretaries is completely different, of course, but the evaluation revealed that the two jobs require approximately equal know-how and problem solving ability, and that although secretaries' working conditions are better (secretaries received no points for adverse working conditions, while painters received 14), the accountability demands on a secretary are worth about 11 points more than a painter's accountability demands. The two occupations therefore have almost the same score. For this reason, the $7000 advantage in pay enjoyed by painters—most of whom are men—was deemed unfair to secretaries—most of whom are women.

Such "unfairness" is unearthed just about everywhere this sort of evaluation is applied. "Pure" job evaluation consistently reveals that women in the United States are worth more than their salaries indicate. Proponents of comparable worth demand redress. And, as their record in the courts, the legislatures, and at the bargaining tables makes clear, redress is on the way. In the words of Nancy Perlman, Chair of the National Committee on Pay Equity: "Comparable worth is rapidly becoming a fact of life in the eighties. . . . Comparable worth is here to stay."[2]

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[1] For more on San Jose's experience with comparable worth, see John H. Bunzel, "To Each According To Her Worth?," *The Public Interest*, Number 67 (Spring, 1982): 77-93.

[2] Nancy Perlman, testimony before the House Subcommittee on Human Resources of the Committee on Post Office and Civil Service. "Pay Equity for Women Hearings," September 16, 1982.

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Feminine—and feminist

Although this is not the first "woman's idea" ever to seek to find its way into law, it is among the purest: The call for comparable worth is perhaps the most profoundly *feminine* political demand ever to be taken seriously in this country. It is feminine and also feminist, for at its root is the candid recognition of gender, making it the most important new development within the mainstream feminist movement. Nor is the coincidence of the two developments—the vigor of comparable worth and the new direction of feminism—accidental; on the contrary, the one is the direct policy manifestation of the other.

The significance of gender is a new idea to that group of feminists perhaps best represented by the National Organization of Women (NOW). Although radical feminism has always had its finger on this truth—radical feminists have maintained a bitter and unshaken conviction of the differences between men and women—the women's movement of the 1960s and 1970s in the professional and middle classes was primarily interested in establishing *the similarities* between the sexes, so that employment opportunities once denied to women could be made available. It regarded efforts to describe the "feminine identity"—in fact, even assertions that there was such a thing—as the perpetuation of a set of stereotypes designed to keep women down. Betty Friedan, in her 1963 book, *The Feminine Mystique*, was an early and important advocate of this position.

Last year, twenty years after *The Feminine Mystique*, it was Friedan again who opened the door to a new and contrary feminist development, in *The Second Stage*.[3] Here she argues that, at least in the past, men and women have thought and acted in different modes, especially when called upon to be leaders. Perhaps somewhat wary of her own about-face, Friedan hedges: "It seems too simplistic to talk about this as 'male' and 'female' modes of thought." But she does precisely that, although she thereafter calls them the "Alpha" and "Beta" modes. She describes them thus:

> Alpha-style leadership . . . is based on analytical, rational thinking. It relies on hierarchical relations of authority. . . . According to actual data collected by social scientists from Harvard and elsewhere of differences in male and female power styles and negotiation behavior, the Alpha, or male, power style is more "direct" and "aggressive," is based on the experience of "abstracting one particular task or demand from its surroundings at a given time," strives competitively for an all-or-

[3] Betty Friedan, *The Second Stage*, (New York: Summit Books, Simon & Schuster, 1981).

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> nothing solution, expecting "a clear win-or-lose,"—a "zero sum solution" —with "any non-win conclusion resulting in a loss of face."

The feminine, Beta style

> is based on synthesizing, intuitive, qualitative thinking and a "contextual," "relational" power style. It is tuned to more complex, more open and less defined aspects of reality. Its concern is the whole picture being presented rather than fixed quantities and the status quo; the sharing of internal resources and the establishment of interdependent adaptive relationships of support.

The division of people between these two modes, she says, is not biologically determined. Women perfected the Beta mode because their province was family life, and men perfected the Alpha mode because of the work they did. In the "second stage of feminism," to which the title of her book refers, Friedan hopes to see the two modes merge.

Not surprisingly, Friedan's book caused a feminist sensation. And less than a year later, in 1982, an Associate Professor of Education at Harvard, Carol Gilligan, caused another with the release of her book, *In a Different Voice*.[4] Gilligan's description of female thought is strikingly similar to Friedan's. She concludes that women and men have different "moral domains," and that "women's construction of the moral domain relies on a language different from that of men's. . . ." Whereas men define moral problems in terms of rights and rules—the "justice approach"—women's moral language, she writes, is the language "which defines the moral problem as one of obligation to excercise care and avoid hurt":

> Women's construction of the moral problem as a problem of care and responsibility in relationships rather than as one of rights and rules ties the development of their moral thinking to changes in their understanding of responsibility and relationships, just as the conception of morality as justice ties development to the logic of equality and reciprocity. Thus the logic underlying an ethic of care is a psychological logic of relationships which contrasts with the formal logic of fairness that informs the justice approach.

Gilligan concludes by asking developmental psychology to consider the feminine moral construction to be as mature and credible as its masculine counterpart. The full response from developmental psychology is not yet in, but the response from mainstream feminism has been an immediate and deafening affirmation.

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[4] Carol Gilligan, *In a Different Voice*, (Cambridge, Mass.: Harvard University Press, 1982).

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The "maleness" of the workplace

But Friedan, Gilligan, and their followers go further than the simple acknowledgement of gender. As well as adopting radical feminism's recognition of the differences between the sexes, they have adopted some of its bitterness and righteousness. Supposedly, men and women not only are different, but women are better.

Not accidentally, this attitude harmonizes with their broad social and political visions. Feminists have never been much enamored of capitalism, and this new view offers them a new reason to oppose it: What they take to be the power centers of the world—the realms of politics, finance, and industry—are literally and spiritually male. They are for the most part controlled by men, and they operate in an "Alpha" mode. Thus an old enemy—capitalism—now shines forth in a new, sexual light.

The "maleness" of the job market enrages this new breed of feminist. They observe with the deepest indignation that the employment market is competitive, that pleasant and lucrative work is scarce, and that employers do not necessarily reward the virtues of "caring" and "responsibility for others." They seem dismayed that proficiency in the kind of behavior now understood to be "feminine" will not guarantee a person the job of her choice. The world men have set up seems to them a completely uncivilized place.

Caryl Rivers, a prominent feminist, expresses this notion in a recent *New York Times* op-ed article. Rivers pleads for "a way of looking at life in which caring is vital." Citing Gilligan, she asserts that women already have such a view of life, as it is they who consider the effects that their decisions will have on "relationships." She deplores the fact that "power," as men have wielded it, has not been exercised "for the good of all," but rather for gain. "Society still operates," she writes, "on a 'male' idea of power as a means of self-aggrandizement." In this belief she is like Friedan, who deplores "the harsh, Alpha-style masculine dominance" in business and the professions. Friedan warns that this style will lead us "in the direction of an authoritarian and homogeneous society."

These feminists insist that the masculine standard of behavior ruling the world of work presents women entering the job market with an intolerable dilemma. Must they resign themselves to remain at the bottom of the career ladder? Or must they give up their "traditional feminine qualities"—a surrender now seen to violate their very nature?

The new feminist answer to these questions is that women should

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not be required to change in order to succeed in the workplace. Rather, employers should change; they should be made to start valuing feminine behavior, because feminine behavior is good. And feminists are confident that this will happen. "I suspect," writes Friedan, "that . . . American democracy itself has come to the end of a stage—the last stage for a certain political mode, a style of political leadership that has been defined as masculine."

Rivers, like Friedan, is confident. She seeks to reassure those frightened men who fear the loss of feminine "caring" as women move into the workplace—she is sure that such a loss need not occur. "Women, it seems," she writes, "are bringing this complex, people-oriented view [as described by Gilligan] into their new roles." She cites research that indicates that "many working women are very aware of the needs and feelings of others and [try] to find ways to incorporate these perceptions into their job performances. . . . As women gain more access to power . . . most will retain a way of looking at life in which caring is vital."

And not only will women continue their caring, she believes, but also by sheer force of numbers they will turn the workplace itself around to their way of thinking. It will begin to act as they do. Women will "change the game—not just play it." She believes that this change will benefit men: ". . . as old stereotypes ease, men may be permitted the intimacy and concern for others that the psychoanalyst Erik Erikson has called 'generativity.'" And *this* vision is what underlies the idea of, and the campaign for, comparable worth.

The economic argument

Not all advocates of comparable worth, however, make this particular feminist link clear from the outset. Some claim not to repudiate the male mode. After all, they point out, their evaluation systems only measure skill, effort, responsibility, and working conditions—the criteria traditionally used to evaluate men's jobs whenever evaluation has been necessary—and *not* caring and responsibility. And even supply and demand (an Alpha, mechanistic system) are acceptable to them. Their only complaint is of discrimination by unjust agents preventing supply and demand from working properly with respect to women's wages.

An exemplary case of this discrimination, comparable worth advocates agree, is the profession of nursing: Even though there is a shortage of nurses, wages are low and are not rising. But a careful examination of nursing reveals that the more modest protestations

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of the comparable worth advocates are not altogether on the level. Crucial to the accusation of wage discrimination against nurses is the assertion that nurses are in short supply. This is widely taken for granted, but it is puzzling: What does the "shortage" of a service mean when that service's price is not rising? Does not shortage, economically defined, exist only when the price is rising?

When pressed on this issue, defenders of comparable worth concede that employers are succeeding in filling nursing positions; they say the situation is a shortage because employers are finding that they must look to new sources of labor in order to meet the demand. Joy Anne Grune, of the National Committee on Pay Equity, calls this employer practice "redefining the labor pool."[5] What it turns out to mean is simply that by aggressive recruitment among previously untapped populations, employers manage to find people willing to take the jobs they are offering at the prevailing wage level, and thereby avoid the necessity of raising wages. (For example, many hospitals have found that Filipino women will take nursing jobs, and are happy to accept the going wage.) Thus, this allegedly discriminatory interference with the forces of supply and demand turns out to be merely those forces themselves—in fact, those forces at their best and most efficient. There is no discrimination here; there is merely an employer's effort to find an employee who is satisfied with the terms he cares to offer. And there is no shortage—such employees can, it turns out, be found.

Winn Newman, a labor lawyer in private practice who has made a *cause célèbre* of comparable worth, seems to recognize the weakness of the "shortage" argument. "I've really gone off that now," he comments. "I'm not impressed with it." Instead he condemns employers on the ground that they make things hard for their employees. For example, in order for a nurse now employed by someone such as Grune describes to earn a higher wage, she would probably either have to take union action (which might or might not be successful) or find a new job—quite possibly in a field now dominated by men. This is obviously difficult, and in Newman's opinion, she therefore should not be asked to do it. "You have no consideration," he protests, "of what people have to go through when they move into a man's job."

So although some comparable worth advocates will talk about their acceptance of the free market, they do not like it when they see it—and ultimately it is not what they want. The reason they

[5] Unless otherwise noted, these and subsequent quotations are drawn from the author's interviews.

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do not want supply and demand to determine wages is that the supply and demand mechanism is not nice. It can make things difficult for very good and hard-working people. And comparable worth advocates see this non-niceness in a sexual light: It is not nice *like women*; it is efficient, *like men.*

Feminizing the market

The comparable worth proponents' criticism of the market is "feminine"—as Friedan or Gilligan might use the word—on several levels. For example, these advocates express an impassioned concern for inadequately appreciated (and therefore inadequately compensated) competence among female secretaries, receptionists, switchboard operators, etc. They strongly suggest that the reason for this failure of the labor market has something to do with the personal qualities—"nice," feminine qualities—of the employees. As Grune explains, "There's a veneer of family-like, friendly niceness in white collar jobs. It's really important for workers to have this kind of environment, that they can trust. But this more often allows employers to take advantage of us." Why? "I'd like to think that niceness and kindness is a strength. But if you keep on being nice, and somebody keeps paying you a low wage, then it's a very painful situation."

On this subject, comparable worth advocates tend even more strongly to see market conflicts in a personal, emotional way. To them, wage-setting is not an economic interaction; it is a psychological or moral act. Maxine Jenkins, a spokeswoman for the California Nurses Association, cites the conflict between caring and not caring as one of two reasons for the failure of a strike her association recently called; she sees it as a moral matter—a question of California hospitals loving or not loving life itself. The strike failed, she says, because

> the hospitals did not seem to care about community health care. They were willing to close the hospitals or run them at a low level for an indefinite time as long as they weren't being hurt economically. It's a moral issue. We learned that hospitals are big business and they are in it only for the profit and they don't care about the delivery of health care. . . . We will be struggling for a long number of years and I believe the fight will be bitter because we are trying to change a tradition deep-rooted in our society.[6]

[6] Patti Roberts, "More on the San Jose Nurses: An Interview with Maxime Jenkins," *The Comparable Worth Project Newsletter* 2, Number 2 (Spring 1982): 4-7.

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If this seems familiar, that is because it is the very feminization of the workplace anticipated by Rivers. It is a woman's demand for a workplace that is more like her, and that allows her to continue to act as she is used to acting and prefers to act. And it is her demand, too, for the same kind of caring—in dollars and cents—that she has just discovered that she, as a woman, routinely extends to others for free.

At first it is difficult to tell if the advocates of comparable worth mean to be as radical as they are, or if, rather, they are simply naive. Certainly many of them seem to have no sense of the way a market works. They take umbrage, for example, with the common policy of basing wages on prevailing rates. The Comparable Worth Project newsletter alleges that this policy forces *traditionally* low-paid employees to accept low payment *permanently*, because "they work in occupations that have not commanded high wages in the past." This method, the newsletter claims, perpetuates historic biases. But the argument seems utterly oblivious to the fact that a prevailing rate can creep up over time, as has happened in so many occupations (especially unionized ones).

Eleanor Holmes Norton, head of the Equal Employment Opportunity Commission under the Carter administration and a strong advocate of comparable worth, makes a similar mistake. She warns that if wages in female-dominated fields remain low, women will move to different jobs and society will fall victim to "... large, permanent, and harmful dislocations out of the traditional woman's occupations, many of which are vital to a modern and humane society." But, of course, if so many women moved to different jobs, the wage for the old job would rise and the process would be halted; and if the wage didn't rise, then, in fact, the work was not vital.

But these cases of simple ignorance appear to be exceptions. For example, Congresswoman Geraldine Ferraro, in response to an anecdote about a little girl who wanted to become a lawyer, remarked:

> She can become a lawyer, and it's a man's profession, and she can get equal pay to a man for that work. But wouldn't it be nice if she could have the freedom of choice to choose a woman's profession and get equal pay for work of that value?[7]

She seems to suggest that it ought to be a goal of this nation to make available to people the work they want at the pay they want.

[7] Geraldine Ferraro, testimony, "Pay Equity for Women Hearings," September 16, 1982.

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The *Progressive* magazine seems slightly more sensitive to the practical complications posed by comparable worth's lofty aims. It notices them, in particular, with respect to job evaluations. As one tries to figure out how much money work is really worth, one is likely to find that not many jobs are altogether fun. Who gets the low salary then?

> If we do not assign wages by gender or by race or national origin, how *shall* we assign them? By skill? But what of the people whose jobs require little skill but great tolerance for stress? And if we add stress to the pay formula, what about those whose jobs require little skill and stress tolerance—but because of that very fact are boring and bland and, in some cases, demeaning?[8]

The end of this line of reasoning is obvious: The only way out of this dilemma is to give no one the lowest salary, but to pay everyone equally.

Unseen implications

The proponents of comparable worth—and their forbears in the feminist movement—have not quite come to grips with the implications of their new discoveries about femininity.

The feminist advocates of comparable worth are driven, by the logic of their argument, to assume that women are extraordinarily weak, limited, and passive. Here, the language of comparable worth is especially revealing. It is full of the passive voice—a passive voice for passive people. *Ms.* says women "are ghettoized" in low-paying occupations (a "pink collar ghetto," no less). Elsewhere, women "are concentrated" at the bottom of the career ladder; they "are clustered," they do not cluster; they "are segregated," "tracked," "stuck," and "tied." All the time, it seems, someone else is doing something to them. The idea that women can display initiative in their jobs and careers is not even contemplated as a possibility in this literature. In a strange inversion, these soldiers in the battle for "the feminist issue of the eighties" demand: "Do it *for* me!"

In a similar way—and equally inadvertently—the proponents of comparable worth demean what they call the feminine quality of "caring." They want, quite simply, to commercialize it. Here is what Grune has to say about some women telephone callers to a radio show on comparable worth:

> Mostly they talked about how they feel that they give and give and give on the job. Not just the quality of their work, but their under-

[8] "Woman's Work," *The Progressive* 45, Number 8 (August 1981): 9.

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> standing of people, what they give, as people, to a workplace. (You know, all the birthday parties, soothing people, and taking care of things.) And that now they expect to be rewarded for this.

Sometimes this argument is varied by saying that women deserve to be paid for caring because they have no choice but to do it—society demands it of them. If however, they really do it under duress, it is hard to see how they can claim it as a virtue deserving of special reward.

Most importantly, the discoveries of comparable worth advocates have not helped them to understand why women have the jobs they do. Their own job statistics, and their own proclamations about women's characters, point to one thing: In this day and age, most women are nurses and secretaries because that is the work they prefer to do. The plain fact is that a great many women want to nurse (or they want to nurse more than they want to do anything else), and they choose to take those jobs even if they do not like the wage and could make more money trimming trees or guarding parking lots. It is worth it to them.

Nor should such women be told that this choice places them "at the bottom of the career ladder." People consider all sorts of things when they choose work, and money is only one of them. Teaching, for example, is a relatively low-paying occupation that offers the possibility of many kinds of satisfaction. Can teachers be said to be at the bottom of the ladder? Many richly fulfilled teachers would say otherwise, no matter how willingly they would accept a raise if they were offered it.

Finally, though, all of this may be irrelevant. For even if the advocates of comparable worth were correct to say that feminine qualities are "undervalued" in the workplace, and even if they were correct in calling this undervaluation "systematic," and even if it were true that American culture is in some way misogynistic—even so, they would still be barking up the wrong tree with the feminine rhetoric of comparable worth. The comparable worth agenda will do them damage. The male ethos—as defined by the new feminists themselves—is absolutely necessary to the working world. It has made American business productive and efficient, and the requirements of the workplace simply demand such "masculine" behavior from employees.

Nor is the demand that women "act like men" in their working lives tantamount to demanding that they continue to earn a low wage. It merely asks that they solve their wage problem in the "masculine" way. Whereas to this feminine way of thinking, the

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fact that nurses are paid less than tree-trimmers is a source of moral outrage, to the "masculine" mind it is simply one reason—among many possible reasons—not to be a nurse. And thus should nurses respond, if they are troubled by their salaries.

To the degree that women *want* the kinds of jobs and careers hitherto dominated by men, and to the degree that they are willing to alter their supposed "womanly" outlook from 9-to-5—they can and will get "men's jobs" within the framework of an open job market. That this is already happening may be inferred from a NOW flyer, that prints, without comment, a U.S. Census Bureau table reporting the "wage gap" for different age groups. What NOW apparently wants its readers to observe is that there is a wage gap at every age level; a more interesting observation, however, is that that gap narrows in practically a straight line as the age groups get younger. Younger women still earn less than their male peers, but they do not earn as much less. Apparently, women reared in more liberal times *are* voting with their feet.

Such a breakdown in the working world of the sexual division of role—the willingness of women to behave like men for the sake of traditionally male career rewards—may not be an unmixed blessing. It carries a risk: Women may find themselves unable to return to the feminine mode when they leave their offices and go home at night. For years they have been complaining that men are unable to cope adequately with the worlds of work and home, and it might well be that women have no superior talent for living a divided life. If this is true, then it is a real problem.

But when all is said and done, it is a separate problem. It is unlikely to be solved by an attempt to unify two radically different worlds by transporting feminine ways to the marketplace.

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The political philosophy of J.M. Keynes

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Not very long ago, the triumph of Keynesian economics as the guiding force in American public policy seemed assured. But now, with a Republican administration committed to monetarism and supply-side economics, and with the Democrats suddenly concerned about the size of the federal budget deficit, it is clear that we have traveled a long way from the "Keynesian consensus" in an unexpectedly short time. Yet it would be premature to say that what Robert Lekachman calls "the age of Keynes" is over. Not only may we suspect the existence of a more or less hidden Keynesian orientation in the current liberal agenda (public works programs, attacks on "tight money," etc.), but, as George Gilder has recently written, "the actual works of Keynes . . . are far more favorable to supply-side economic policy than current Keynesians comprehend."

Part of the reason for this continuing openness to Keynes's influence has been the widely held assumption that Keynesian policies are themselves independent of any specific ideological content. According to Lekachman, Keynesian techniques of economic management "are simply neutral administrative tools." A study of the Keynesian corpus, however, suggests that Keynes himself thought of his economic prescriptions as instrumental to a particular set of *political*

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goals. Indeed, rather than aiming merely to "save" the capitalist system, as he sometimes professed to be doing, Keynes aspired to transform it in a way that would improve it *morally*, as well as technically. A study of Keynes's political thought is of interest not only because it sheds new light on the intentions underlying his economics, but also because his writing reflects a set of assumptions about political life that both Keynesians and non-Keynesians hold to this day.

The "religious" influence of G. E. Moore

Of special interest in tracing the genesis of Keynes's political thinking is a memoir he wrote in 1938, entitled "My Early Beliefs." In this essay Keynes emphasizes the powerful influence that the Cambridge philosopher G. E. Moore exerted on his intellectual development, as well as that of his friends (including fellow members of the Bloomsbury group). Moore's ideas, as expressed in his *Principia Ethica* and through his conversation, "dominated, and perhaps still dominate, everything else" to Keynes. What influenced Keynes and his friends in Moore's teaching was the philosopher's "religion" ("one's attitude towards oneself"), as distinguished from his "morals" ("one's attitude towards the outside world and the intermediate"). The unintended result, Keynes confesses, was that Moore's students acquired "a religion and no morals."

The attraction of Moore's doctrine lay in its aesthetic, ascetic, and unworldly character. According to that doctrine, Keynes writes, "nothing mattered except states of mind." Life should be devoted to the cultivation of "timeless, passionate states of contemplation and communion," the appropriate subjects of contemplation and communion being love, aesthetic beauty, and a beloved person. The effect on Moore's students was to encourage an attitude of "calvinistic withdrawal" from worldly concerns, and the dedication to an "Ideal" from which "social action as an end in itself and not merely as a lugubrious duty had dropped out . . . and not only social action, but the life of action generally, power, politics, success, wealth, ambition, with the economic motive and the economic criterion less prominent in our philosophy than with St. Francis of Assisi, who at least made collections for the birds."

A curious philosophy, it would seem, for a young man who would go on to achieve fame as an economic theorist and adviser, and an active participant in political affairs. Yet in his maturity Keynes apparently retained his personal adherence to Moore's creed, find-

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ing Moore's "religion" to be "nearer the truth than any other that I know," and remarking that "it is still my religion under the surface." From the perspective of 1938, Keynes did fault Moore's teaching for embodying an erroneous and "*a priori* view of what human nature is like," one which encouraged his students to persist in the eighteenth-century illusion of continuing, uninterrupted moral progress, and to exaggerate the inherent rationality and decency of human nature. Thus they wrongly supposed that human beings could safely be "released from the outward restraints of convention" and traditional moral rules in order to follow their own "pure motives and reliable intuitions of the good," rather than recognizing "that civilization was a thin and precarious crust erected by the personality and the will of a very few, and only maintained by rules and conventions skillfully put across and guilefully preserved." Yet this weakness of Moore's doctrine was outweighed, in Keynes's estimation, by the fact that it served to liberate its adherents from the greater and more common error of "Benthamism," that is, "the Benthamite calculus, based on an over-valuation of the economic criterion, which was destroying the quality of the popular Ideal," and which the mature Keynes regards as the true cause of the "moral decay" of modern civilization. At the same time, the "unsurpassable individualism" of Moore's teaching safeguarded his pupils from falling prey to "the final *reductio ad absurdum* of Benthamism known as Marxism."

Despite Keynes's criticism of Moore's unrealistic view of human nature, the fact that he does praise the influence of Moore's doctrine on his *political* beliefs appears to belie Lekachman's claim that "for the maturer Keynes, Moore became a religion of Utopia, not a set of precepts to guide his worldly life." On the contrary: The outlook Keynes imbibed from Moore did influence his "worldly" political and economic activities, both in his conception of the good society towards which men should be led, and in his choice of means to be employed in its creation.

Of morals and materialism

This influence is clearest in a series of Keynes's essays, published between 1925 and 1930, which dealt with politics and the destiny of mankind. Their unifying theme is the evaluation of the effects on human well-being of various alternatives to laissez-faire liberalism. In one of the essays, "A Short View of Russia," published just after his post-nuptial visit to that country (1925), Keynes appears

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to confirm the claim that Moore's influence had served to inoculate him against the temptations of Marxism. Viewing the Soviet regime with far clearer eyes than did many of his contemporaries among the English intellectual class, Keynes not only denied "that Russian communism has made any contribution to [solving] our economic problems of intellectual interest or scientific value," but also expressed forthright opposition to Lenin's intolerance, his merciless persecution of dissenters, and his endeavor to stir up international strife.

Yet, at the same time, this severe criticism is qualified by Keynes's description of Communism as a "new religion" (albeit an "*absolutely, defiantly, non-supernatural* one"), which might act as an antidote to "the egotistic atomism" of modern capitalism. Skeptical as Keynes might have been of Communism's claim that it could totally overcome men's natural concern with their individual economic well-being, he nonetheless made note of its effort to reshape society by closing off the opportunities for individual acquisition, and thereby vastly reducing the influence of economic motives. Keynes's interest in such an effort arose from his belief that an over-reliance and emphasis on "the money motive . . . with the universal striving after economic security as the prime object of endeavor, with the social approbation of money as the measure of constructive success, and with the social appeal to the hoarding instinct as the foundation of the necessary provision for the family and for the future" constitutes "the moral problem of our age." In this regard, the Communist's "ultimate Faith" that materialism can be transcended may be more significant than his objectionable "tactics." Hence Keynes suggests that "Russian communism [may] represent the first confused stirrings of a great religion." He writes of a feeling of "elation" at the process of social experimentation occurring in the Soviet Union, and concludes that if Russia is to be feared, it is because of the "moral force" she may embody, since "beneath the cruelty and stupidity of New Russia some speck of the ideal may lie hid."

The challenge of Communism to liberal capitalism, as Keynes understood it, is ultimately moral rather than political or economic. Now that Western man has lost the faith that heaven is to be achieved in another world, as well as the progressive's belief that capitalism can achieve "heaven upon earth," he will no longer be willing to "sacrifice, even for a day, moral to material advantage." Hence we can no longer avert our eyes from the moral ugliness of capitalism. Capitalism can be preserved—indeed, deserves to be

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preserved—only if it can be modified so as at least partly to transcend materialism. Keynes saw promising signs of such transcendence already developing within capitalism. While recommending the development of semi-autonomous public bodies authorized to act for the sake of the common good, he believed that joint stock corporations, when they grow large enough to effect a separation between ownership and management, actually approximate such public bodies. In such organizations, "the direct personal interest" of management "in the making of great profit" is mitigated. The concomitant "waning of enterprise" that may result is more than counterbalanced by moral improvement. Keynes writes that this "tendency of big enterprise to socialize itself" signifies that "the battle of Socialism against unlimited private profit is being won in detail hour by hour," without any need for the government to acquire ownership of the means of production.

In a manner that has since become typical of contemporary liberal thought, Keynes presupposed that it is possible to preserve the individualism Moore taught him to cherish in the non-economic sphere of life, and even to maintain the real economic benefits of "private initiative and enterprise," while at the same time greatly expanding governmental direction of the economy. Out of moral concerns, rather than narrowly economic ones, he advocates that "Society" exercise "directive intelligence . . . over many of the intricacies of private business." Not only are a central control of currency and credit and the broad dissemination of economic information necessary, but public determination of the proper rate of savings, investment, and population growth is essential as well. Ironically, "material prosperity" may actually pose an obstacle to such needed reforms, since it "removes the incentive" to innovate that poverty would supply, "just when it might be safe to take a chance."

Keynes's belief that the fundamental issues of the coming age would be moral rather than technical and economic, and that too much prosperity might obstruct the reforms for which the new age called, may help to explain the sanguine temper with which he viewed the onset of the Great Depression. In "Economic Possibilities for Our Grandchildren" (1930), he dismisses the "economic pessimism" of those who feared that the period of rapid economic progress that characterized the nineteenth century had ended. To the contrary, the "new disease" of "technological unemployment" exemplified temporary "growing-pains" resulting from "over-rapid changes"; this very disease actually signified "in the long run *that*

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mankind is solving its economic problem." The real problem for man would not be how to provide for his future material needs, but "how to use his freedom from pressing economic cares, how to occupy the leisure which science and compound interest will have won for him, to live wisely and agreeably and well."

Within a hundred years, Keynes predicted, the standard of living in more developed nations would increase some four to eight times, thus freeing men to cultivate "the art of life itself" rather than that of money-making. For some time to come, it would be necessary to accommodate "the old Adam" by spreading the remaining work among as many people as possible, through such devices as a fifteen-hour work week. But in the long run, "there will be great changes in the code of morals" by which men will rid themselves of "the pseudo-moral principles" connected with acquisitiveness "which have hag-ridden us for two hundred years." Not only will the love of money itself be recognized as "a somewhat disgusting morbidity," but "[a]ll kinds of social customs and economic practices, affecting the distribution of wealth and of economic rewards and penalties, which we now maintain at all costs, however distasteful and unjust they may be in themselves, because they are tremendously useful in promoting the accumulation of capital, we shall then be free, at last, to discard." While "there will still be many people with intense, unsatisfied purposiveness who will blindly pursue wealth," "the rest of us" will be free to "inquire more curiously than is safe to-day into the true character of this 'purposiveness' with which in varying degrees Nature has endowed almost all of us."

Purposiveness leads the individual to concern himself "with the remote future results" of his acts rather than "with their own quality"; he aspires "to secure a spurious and delusive immortality for his acts by pushing his interest in them forward into time." Somewhat crudely, Keynes suggests "it is not an accident that the race which did most to bring the promise of immortality into the heart and essence of our religions has also done most for the principle of compound interest and particularly loves this most purposive of human institutions." Only when freed from such purposiveness can mankind return to "the most sure and certain principles of religion and traditional virtue": those which condemn avarice, usury, and the love of money, and which teach "that those walk most truly in the paths of virtue and sane wisdom who take the least thought for the morrow." Having learned to "value ends above means and prefer the good to the useful," men will "honor those

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who can teach us how to pluck the hour and the day virtuously and well, the delightful people who are capable of taking direct enjoyment in things, the lilies of the field who toil not, neither do they spin."

Who builds the future?

This last remark constitutes a striking testimony to the degree to which the mature Keynes, in his conception of the goal of life, remained loyal to the "religion" he had been taught by Moore: Valued above all are immediate aesthetic or intellectual experiences, esteemed without regard to any further consequences and actions. Yet one may well wonder how realistic Keynes was in thinking that this "religion" could ever become the dominant one in a society. While Keynes professed to be returning to the most "certain principles of religion" in condemning avarice, his more general critique of purposiveness, and of a concern with the future, can hardly be said to square with the Judaeo-Christian tradition.

It is also striking that in Keynes's hopeful anticipation of a world freed from economic concern, he passed over what he had once described as "the most admirable aspects of the love of money in our existing society, such as thrift and saving, and the attainment of financial security and independence for one's self and one's family." If men are freed from the need to provide economically for their own children, and thereafter devote themselves to the pleasures of the moment, will they truly be less selfish and hence more morally attractive? Might not a concern for the future significance of one's actions, on the contrary, lie at the heart of what distinguishes mankind from the beasts, and the source of whatever greatness men are capable of attaining? And what of those "dangerous human proclivities" that, as Keynes writes in a later work, are "canalised into comparatively harmless channels by the existence of opportunities for money-making and private wealth, [and] which, if they cannot be satisfied in this way, may find their outlet in cruelty, the reckless pursuit of personal power and authority, and other forms of self-aggrandisement"? While Keynes allows that in the ideal society of the future there will remain many "with intense, unsatisfied purposiveness who will blindly pursue wealth," would not the reduced social estimation that is to be attached to wealth-getting make it likely that the more ambitious among them will pursue more dangerous channels for their ambition?

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Aside from its kinship with Moore's view of the goal of life, Keynes's political thought is also noteworthy for its parallels to Marxism. As we have seen, Keynes was scornful of Marxism as an economic doctrine, and appalled by the political tactics practiced in its name. He also disagreed with the Marxian claim that the evils of capitalism can be overcome only by violent revolution; this claim is as misguided a form of "pessimism" as the belief of "the reactionaries who consider the balance of our economic and social life so precarious that we must risk no experiments." Yet in his denunciation of the money motive, in the view expressed in "Economic Possibilities for Our Grandchildren" that economic changes must precede moral ones, in the claim in his writings on the Versailles treaty that economic issues are far more fundamental than political ones, and in his portrayal of a coming good society in which labor and the economic divisions among men have been abolished—in all this Keynes is consistent with many of Marx's fundamental tenets. Most significant of all is their agreement that economic concerns can be transcended only by the further refinement of economic organization and the further development of the means of production. Just as Marxism employs the promise of the future New Order—as Keynes himself observed—to justify the immoral means practiced by the leaders of the Communist revolution, so Keynes held that the ultimate triumph of morality over avarice must wait upon prior economic advancement by means of avarice itself. For at least another century, he writes, it will be necessary to pretend "that fair is foul and foul is fair; for foul is useful and fair is not": avarice, usury, and "precaution," however reprehensible in themselves, are the only available means to lead mankind "out of the tunnel of economic necessity into daylight."

It should be emphasized that the immorality Keynes thought necessary to accommodate temporarily is not self-indulgence, but rather the *postponement* of gratification. Delayed gratification is characteristic of the excessively "purposive" individual, whose disposition causes him to value the possession of wealth more than its use. In this light it would appear that by the time Keynes published his *magnum opus*, *The General Theory of Employment, Interest, and Money* (1936), the tension he had formerly thought to exist between men's short-run and long-run good had considerably slackened, if not disappeared. For the central principle of *The General Theory* is that thrift, which economists had previously regarded as socially beneficial, is actually socially harmful under most conditions (i.e., in all situations other than that of full employment).

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Given twentieth-century conditions, Keynes holds, the goals of full employment and maximal economic growth can best be attained by promoting consumption rather than saving. While savings may be hoarded rather than channeled into productive investments, the demand generated by increased consumption necessarily induces increased investment, and hence promotes the greatest possible utilization of a society's resources. Hence, rather than encouraging individual thrift, the appropriate economic role for government is to generate consumption through such devices as public works programs, which put more money in the hands of the poorer classes (whose lack of surplus wealth gives them a greater "propensity to consume" than the wealthy). Far from it being desirable to finance such projects by economizing in other areas, such as reducing the salaries of civil servants, Keynes emphasized that they will have the desired effect only if they are made *in addition* to the rest of the government's expenditures, even if they led to a budget deficit. Indeed, it is not even necessary for the new expenditures to be intrinsically productive at all: Keynes contends that unemployment could be combated equally well "if the Treasury were to fill old bottles with banknotes, bury them at suitable depths in disused coal mines which are then filled up to the surface with town rubbish, and leave it to private enterprise . . . to dig the notes up again."

The "euthanasia of the rentier"

While Keynes maintained that the program of *The General Theory* rested solely on economic considerations, the concluding chapter of the book consists of a series of observations on the social philosophy to which Keynes's economic theory might lead. In this chapter he stresses two sorts of change in the domestic social order that his economic analysis may help to justify and facilitate. In the first place, if Keynes is correct in his demonstration that a low propensity to consume generally obstructs the growth of capital, the major economic justification for the "arbitrary and inequitable distribution of wealth and incomes" that characterizes existing Western societies has been undermined. Instead, economic arguments can now be employed to buttress the moral case for income redistribution. While Keynes holds "that there is social and psychological justification for inequalities of incomes and wealth," in that some "valuable human activities . . . require the motive of moneymaking and the environment of private wealth-ownership for their full fruition," and the pursuit of wealth also serves as a

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"comparatively harmless" diversion for some "dangerous human proclivities," he denies that these facts suffice to justify "such large disparities as exist to-day."

A second—and in Keynes's view much more fundamental—consequence for social policy derives from his theoretical claim to have refuted the belief that "a moderately high rate of interest" is necessary to induce the savings required for adequate investment. According to Keynes's theory, it is actually economically beneficial for government to reduce the interest rate to a minimal level through public expenditures that increase the capital stock. Here again, economic considerations combine with those of social equity, since such a reduction in the rate of interest "would mean the euthanasia of the rentier, and, consequently, the euthanasia of the cumulative oppressive power of the capitalist to exploit the scarcity-value of capital." Any shortfall in the amount of private savings necessary to deprive capital of its scarcity-value can be recouped by "communal saving through the agency of the State"; it would remain to be decided "on what scale and by what means it is right and reasonable to call on the living generation to restrict their consumption, so as to establish, in course of time, a state of full investment for their successors." After the gradual, painless death of "the rentier, the functionless investor," it would still be possible to allow a reasonable rate of return for the exercise of "intelligence and determination and executive skill" by "the financier, the entrepreneur *et hoc genus omne*"; but these men "are so fond of their craft that their labour could be obtained much cheaper than at present."

Despite his advocacy of governmental expansion to achieve social equity and economic efficiency, Keynes reiterated his previous denial that such an expansion would threaten the essential elements of the private enterprise system. Indeed, he stressed that the system, "if it can be purged of its defects, is the best safeguard of personal liberty" and of "the variety of life . . . the loss of which is the greatest of all the losses of the homogeneous or totalitarian state." Keynes warned the friends of freedom, however, to accept the limitations on economic individualism he recommended, lest the unemployment that is "inevitably associated" with capitalism lead to the system's overthrow. He also viewed his programs as conducive to world peace, inasmuch as an increase in domestic investment would mitigate "the pressure of population and the competitive struggle for markets" that set nations' interests at odds with one another.

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The question of incentives

The debate on the actual economic efficacy of Keynes's prescriptions is, we suspect, far from over. But there is another sort of question worth raising: To what extent are the broader moral and political effects of Keynesian policies truly compatible with, or conducive to, the maintenance of a free society? Compare, for instance, Keynes's treatment of the problem of deficient economic demand with that of the nineteenth-century economist Thomas Robert Malthus. Like Keynes, Malthus viewed the gap between production and effective demand as the cause of the periodic economic crises of the capitalist system, and the associated unemployment and hardship for the working class. Like Keynes, he believed that deficiency of demand comes from (sometimes) excessive saving by the wealthy. And, like Keynes, he recommended the employment of the poor on public works projects during periods of economic depression (along with their employment in the improvement of landlords' estates).

But unlike Keynes, Malthus addressed the problem of alleviating unemployment and poverty along with the potential effect of different policies on the moral character of the poor, and consequently on their capacity to serve as productive members of a free commonwealth. Hence, while supporting programs of public works, Malthus opposed the Poor Laws on the ground that they removed the stimulus to industry that was essential for the poor to improve their condition, rather than become a purely dependent class. And while acknowledging that excessive saving on the part of the wealthy might sometimes be economically harmful for the nation as a whole, Malthus refrained from concurring with Bernard Mandeville's praise of prodigality, which Keynes was to embrace. Instead Malthus endorsed the establishment of savings banks, on the ground that the "habit of saving a portion of present earnings for future contingencies" would be conducive to the development of more "general habits of prudence and foresight" on the part of the lower classes. He urged governments to encourage "the habits of sobriety, industry, independence, and prudence" among the poor, and to teach them to recognize their own capacities for improving their condition, rather than to rely on the government.

There is no reason to suppose that Keynes was unappreciative of the virtues of savings banks, or uninterested in the encouragement of habits of self-sufficiency on the part of the poor. Considered as instances or models of public rhetoric, however, his po-

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litical essays and the doctrine of *The General Theory* take no account of the need for such encouragement. And, to the extent that government policies inevitably serve as models for individual conduct, his advocacy of deficit financing cannot be said to promote moderation and self-sufficiency. Robert Lekachman writes that one of Keynes's significant "successes" was "the weakening of the identification between virtue and thrift." But since we have not (yet) transcended the need to labor, and have learned that future-regardingness is an essential attribute of healthy citizenship in a free polity, Keynes's influence in this regard hardly merits the label of success.

One must also call into question the prudence of Keynes's denunciation of the "arbitrary and inequitable distribution" of economic goods, and his recommendations for moderating the alleged inequity. In making these remarks, Keynes was no doubt responding, at least in part, to a tide of popular sentiment, strongly encouraged by the miseries of the Great Depression. Yet in *The Economic Consequences of the Peace* (1920), Keynes himself had stressed the enormous contributions that economic inequality in nineteenth-century Europe had made to the general prosperity by serving as a storehouse for capital investment. What had justified that inequality in shares of economic "cake", he observed, was the tacit condition that the upper class "consumed very little of it in practice." Keynes's denial, in *The General Theory*, that extensive inequality could still be justified in this manner depends on his contention that the need for large accumulations of capital had declined after the war, and that the upper-class's propensity to save had consequently become a bar to economic growth. This contention, based on a theory of "vanishing investment opportunity," is by no means uncontroversial. But this aside, we must note that a curious corollary of Keynes's deprecation of thrift is the encouragement of "conspicuous consumption" by the wealthy—which would make economic inequality far *more* morally problematic than would otherwise be the case.

It is also odd that he should divert attention from the issue of enlarging the economic "cake" for all, to that of redividing a cake of fixed size. In commenting on the economic situation of prewar Europe, Keynes writes that redistributing wealth to elevate the condition of the lower class would have been futile, given the smallness of the cake "in proportion to the appetites of consumption [so that] no one, if it were shared all around, would be much the better off by the cutting of it." Despite the enormous econom-

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ic growth that has taken place since Keynes wrote those words in 1919, there is reason to doubt that the effects of a governmentally-imposed redistribution would be much different today. No matter how it should be divided, the relatively small proportion of total wealth in the hands of the truly "wealthy" could not significally improve the living standard of the majority, and the resultant decrease in work incentives might actually reduce the overall living standard in the end.

Liberty and leadership in the Keynesian state

While it must be left to economists to evaluate Keynes's claim that redistributing wealth could generate net increase in investment (and hence in the general prosperity), the questionable effects of Keynes's *moral* argument on behalf of redistribution may be at least as significant. In calling for "the euthanasia of the rentier," Keynes appears to go out of his way to stimulate and appeal to the envious passions of the poor. Like his denial of the virtue of thrift, such an appeal weakens the qualities of self-sufficiency and moderation that a free polity requires of its citizens. Even though the legitimacy of modern liberal regimes derives from the principle of men's equal natural *rights*, the desire for an equality of economic *condition* exists, as Tocqueville warned, in tension with the desire for liberty. If the mass of men come to believe that their happiness will best be secured by taking away the wealth of the few, rather than by taking advantage of the economic opportunities that a liberal regime offers them to better their condition, they are unlikely to resist the appeal of a would-be despot who represents himself as the people's champion.

Just as Keynes neglected the potential political effects of his rhetoric on the poor, he was insufficiently aware of the beneficial political effects of private accumulations of wealth in a liberal regime. As Federalist #10 emphasizes, there is a natural interplay between men's political opinions and the diversity (in amount as well as in kind) of their property holdings; to homogenize the latter by redistributionist policies is likely to undermine the variety of the former. This would imperil liberty itself. The enormous power of the modern democratic state and of an anonymous "public opinion" in relation to the individual makes it all the more necessary that there be politically independent resources to support minority views in matters of philosophy, art, philanthropy, and religion, as well as politics. Private stocks of wealth are indispensable to that purpose.

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Yet not only does Keynes advocate a reduction of large private accumulations of wealth; he also recommends a vast increase in the role of government in determining the rate—and, despite his disclaimer, the direction—of investment. Paradoxically, the effect may be to impel the wealthy more directly into the political arena, in defense of their interests: The more one's economic situation is determined by government, the more essential it becomes to acquire political power to advance one's economic interest. And in the resultant class conflict, it is by no means obvious that the poor will triumph.

A further word is appropriate on Keynes's distinction between the "productive" entrepreneur and the "functionless" *rentier*. From a purely economic point of view, and assuming that Keynes's theory regarding the harmful effect of "excessive" savings by the wealthy is valid, this deprecation of the *rentier* class might well be justified. But from a broader political point of view it cannot be. In a 1925 speech Keynes lamented the effect of the "hereditary principle in the transmission of wealth and the control of business," contending that the resultant domination of "the leadership of the Capitalist Cause" by "third generation men" was the reason for "weak and stupid" leadership. Yet this deprecation of "third generation men" would appear to sit rather ill with Keynes's attacks on the moral effects of acquisitiveness: "Third generation men" are normally thought to be less money-minded, and more charitable and public-spirited, than their forebears. While as a consequence they might be less efficient money-managers, Keynes himself had applauded the reduced significance of the profit motive that results from the separation of ownership and management.

According to an old and by no means discredited tradition, a system that facilitates the stable inheritance of wealth thereby encourages the development of a governing class whose members aspire to earn public honor by service (political, philanthropic, or military) to the community, or by artistic and intellectual achievement. Since their wealth can be expected to remain stable, the members of this class can be given a moral and intellectual education designed to prepare them for public service. When one recalls English statesmen such as Gladstone and Churchill, who achieved their prominence or received their education in the late nineteenth century, it appears that England up through the time of Keynes's maturity was living off its accumulated economic capital in more than one way. Not only did that capital provide a foundation for future economic growth, it also facilitated the cul-

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tivation of a ruling political class of statesmen and civil servants of unusual depth, acumen, and public spirit (as well as a flourishing of art, scholarship, and culture). Aside from these benefits, it may be suggested that an upper class that was open, as Keynes himself acknowledged the English aristocracy was, to the entry of new men "of capacity or character . . . exceeding the average," served as a foundation of political and social stability, as well as an appropriate model for emulation.

The euthanasia of politics

One of Keynes's sympathetic interpreters, Seymour Harris, suggests that the one serious weakness of Keynes's thought lies in its "failure to reconcile his dislike and distrust of politicians with his determination to thrust upon government serious additional responsibilities." The explanation of this apparent inconsistency, he writes, is that Keynes "hoped the important decisions would be made by experts"—in other words, that the politicians would be guided in their economic policies by technically competent economists like Keynes himself. Keynes was apparently confident that the economic problem itself was fully capable of such technical solution. In a letter to H. G. Wells, he once remarked, "The economic problem is not so difficult, leave that to me, I'll take care of it." Keynes sometimes discounted the importance of such an achievement, suggesting that economics ought to be regarded as a "humble" profession on a par with dentistry. The real meaning of this remark, however, is not that the economist's profession is less important than the statesman's, but that economic as well as political issues are ultimately less significant than "the problems of life and of human relations, of creation and behaviour and religion," which Keynes was accustomed to discussing with his friends.

In a widely quoted passage at the conclusion of *The General Theory*, Keynes compares the influence of economists with that of political philosophers, remarking that "the ideas of both . . . are more powerful than is commonly believed. Indeed the world is ruled by little else." In view of the significance that Keynes consistently attributed to economic issues as against political ones, the extent of the future consequences he anticipated from economic growth, and the scope of the "social philosophy" he appended to his chief economic work, the latter passage seems far more indicative of Keynes's notion of his enterprise than is his analogy to dentistry. Indeed, Keynes's expectation that economics would not

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only mitigate the causes of international strife but would also ultimately lift man entirely out of the realm of "necessity," suggests that economics finally predominates over politics. When "individualism" in non-economic matters, to which Keynes repeatedly affirmed his allegiance, is combined with the subordination of statesmen to the technical guidance of economists, there appears to be little left of the political "agenda." In this sense it may be said that Keynes aimed not only at the euthanasia of the *rentier*, but at the euthanasia of politics as well. His thought is prototypical of the tendency of modern economics to subsume politics and political philosophy under itself.

In reconsidering the roots of Keynes's political thought, it is useful to note some of Robert Lekachman's remarks about the "religion" Keynes imbibed from G. E. Moore. The "highly aristocratic and highly personal" character of Moore's ethics, Lekachman wrote, "assumed a society sufficiently stable and satisfactory in its social, financial, and political arrangements to enable [its] practitioners . . . to devote all their time to the acquisition of desirable states of mind." Moreover, "since worldly activity of any kind tended to diminish the possibility of success in acquiring these states of mind, Moore's disciples appeared to need substantial private incomes. . . ." Despite Lekachman's belief that Keynes's economic views represent a break with Moore's teaching, we have seen evidence that it continued to influence him in important respects. His deprecation of the "functionless" investment that had made his own education and way of life possible seems to mirror directly the "unworldly" attitude that Moore had inspired in his students.

The mature Keynes professed, of course, to have freed himself of Moore's utopian view of human nature, and he sometimes emphasized the fragility of the European *economic* order. But precisely because the motives of men of inordinate political ambition and acquisitiveness remained essentially alien to him—they constituted a "mental disease," a "game," or at worst "dangerous human proclivities" that could nonetheless be "canalised into comparatively harmless channels"—he took insufficient account of the need for political, social, and economic institutions to moderate such passions. While Keynes spoke endlessly of "morality," his moralism was fundamentally aesthetic; it took no account of the need for moral *restraint*, or the need to ground such restraint in something more substantial than a cultivated capacity for harmless enjoyments. This fundamental problem in Keynes's work was diagnosed quite perceptively by the French economist Etienne Mantoux in his cri-

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tique of Keynes's writings on the Versailles Treaty, which Mantoux completed just before his death in World War II:

> Notwithstanding the monumental and unwieldy safeguards introduced as so many barriers to hold man's instincts in check—all civilizations have probably had in common this inexplicable secret, that they assigned him some ulterior end; and it was precisely in so far as they did this that they also sometimes succeeded in being most *humane*.

Behind Keynes's thought and influence stands not only the tradition of modern economics, but also the tradition of nineteenth-century English philosophy as a whole, especially as exemplified by Moore. Much as we might admire the civility and cultivation that the bourgeois ideal inherent in that philosophical tradition made possible in England, we can no longer ignore its narrow estimation of the range of human possibilities and aspirations. So if there is still a chance to guide those aspirations in a salutary direction, it would be well to heed the observation of Mantoux that "humanity-worship is so profoundly inadequate to the true aspiration of man, and so incompatible with the natural organization of mankind, that it must end almost fatally in some form or other of individual or collective self-worship, and indeed it ends not infrequently in devil-worship pure and simple." Thus humanity may continue to stand in need of religion in a sense more significant than "one's attitude towards oneself," and of a philosophy more searching than the cultivation of "timeless, passionate states of contemplation and communion."

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The judiciary in the administrative state

JEREMY RABKIN

THE extraordinary activism of the federal courts in recent decades is often attributed to the proliferation of new claims against the state. As popular expectations of government have expanded, so "inevitably"—as many commentators assure us—have the responsibilities of the courts been multiplied and extended. And indeed the rhetoric of the welfare state seems to invite broad judicial involvement in public affairs. President Roosevelt described the New Deal as pointing beyond the promotion of the general welfare to the establishment of "a second Bill of Rights," embracing "the right to a useful and remunerative job," "the right of every family to a decent home," "the right to adequate medical care" and "the right to a good education," among others. What could be more natural than to have the judiciary protect and enforce these new rights, as it had always protected citizens' rights to liberty and property?

It takes some effort to recall that, at the outset, harmony between the judiciary and the welfare state did not seem natural at all. Before Roosevelt devised his court-packing plan in 1937, the federal judiciary was regarded as one of the prime *barriers* to expansion of the welfare state. The subsequent accommodation between the judiciary and the welfare state brought with it a far-reaching

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transformation of American jurisprudence. As the logic of that transformation has worked its way out, the judiciary has changed from a guardian of private rights and representative government to a managing partner in the modern administrative state.

Decades of acquiescence

The authority of the American judiciary was originally conceived in rather narrow terms. "The province of the court," Chief Justice Marshall insisted in *Marbury* v. *Madison*, "is, solely, to decide on the rights of individuals, not to inquire how . . . executive officers perform duties in which they have a discretion." The courts would review the legality of government actions only at the behest of those whose liberty or property—whose own private rights—were immediately threatened by the government. Even challenges to the constitutionality of a particular law could only be brought by those claiming that their own personal rights were threatened by its enforcement. Where government did not directly coerce private conduct or take private property, its decisions received no more judicial attention than those of a private person in his own affairs.

This still left considerable room for the application of judicial brakes to government expansion, however. Chief Justice Marshall was zealous in enforcing the constitutional prohibition against state laws "impairing the obligation of contracts." Late in the nineteenth century, his successors began to strike down state labor laws which interfered with "liberty of contract," a right ostensibly guaranteed by the Fourteenth Amendment. Such decisions as *Lochner* v. *New York*—in which the Supreme Court struck down a maximum-hours law for bakery workers—have entered the folklore of the modern judiciary as willful attempts to read *laissez faire* economics into the text of the Constitution. But in truth such judicial balkings at paternalistic legislation were rather exceptional even at the time. Prevailing legal doctrines were quite able to accommodate the emergence of new health and safety regulations (at the state and local level) in the early decades of this century. The Court's confrontation with the New Deal did not stem from its skepticism of paternalistic legislation, per se, but rather from its efforts to uphold what it regarded as essential principles of the constitutional order—and what New Dealers regarded as fundamental barriers to the expansion of "affirmative government."

First, the Court felled several major New Deal enactments—as it had struck down a few pieces of progressive legislation in pre-

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ceding decades—for exceeding the powers of the federal government and usurping decisions reserved for state and local authorities. To the justices, preserving the autonomy of state and local governments meant preserving the opportunity for meaningful popular participation in civic affairs, and allowing these local adaptations and accommodations that make for responsive government. In previous generations, the overwhelming majority of Americans had indeed regarded federalism as the most vital guarantee of self-government. But by the early decades of this century, many progressives had come to regard federalism as an obstacle to active government. Fearing loss of business to their neighbors, states would go only so far in raising tax burdens and extending regulatory controls. Federal taxes and regulations promised to be quicker and more complete—if only the federalist limitations, still nurtured and enforced by the Supreme Court, could be swept aside.

The Supreme Court also struck down two New Deal enactments that delegated too much law-making authority to administrators. This was the first time the "non-delegation" doctrine was actually used to invalidate an act of Congress. But from as far back as Marshall's time, the Court had repeatedly warned that unduly vague or open-ended laws would violate the fundamental principles of constitutional government. To the justices, the non-delegation doctrine was an essential guarantee that administrative activity would be constrained by law and that "law" would be made by elected representatives, not by unaccountable officials.

To the New Dealers, however, the non-delegation doctrine seemed as anachronistic as federalism. Congress, they insisted, could not possibly have enough time, enough technical competence, nor enough political fortitude to make all the policy decisions involved in the regulation of a modern industrial economy. Sound policy required administrative flexibility and wide scope for the exercise of administrative expertise.

In fact, traditional jurisprudence was not uniformly hostile to executive discretion, or indifferent to the claims of administrative expertise. That is why the federal courts refused to interfere in executive affairs, except to protect private rights—and generally held to a narrow or negative understanding of rights, embracing little beyond the right to be free of unauthorized or unconstitutional government coercion. But vague statutes would undermine even this role, since no reviewing court could then be very sure of what regulatory or administrative decisions were or were not authorized.

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To many New Dealers, however, this was far from troubling: They were already fighting to loosen judicial controls on administrative decision-making. As late as 1940, President Roosevelt vetoed an administrative procedure bill, sponsored by the American Bar Association, for making judicial review too widely available, and for imposing excessively formal procedures on administrative agencies (which would have facilitated closer judicial review of their decisions).

The eagerness of the New Dealers to loosen judicial controls on administration was, like their impatience with federalism and the non-delegation doctrine, partly a result of their recent experience with unsympathetic judges. But the general concern to restrict judicial review also reflected a general suspicion of the rule of law, and of the conception of legal rights that sustained it. A generation of "legal realists" in the better law schools had inculcated the teaching that legal issues were inseparable from economic and social policy questions. And if one shifted attention in this way from legal rights to social consequences, the obvious conclusion was that disputes should be settled by those with the relevant expertise and information: specialized administrators rather than judges. Thus, a contemporary text on administrative law candidly acknowledged that entrusting "the determination of individual rights and interests" to regulatory agencies "cannot but make those rights more flexible and more responsive to uncertain factors of discretion," as befitting "the newer philosophy of social solidarity." By contrast, "the old system of adjudication by courts . . . applying supposedly permanent rules of law" proceeded with a "single-minded attention to the individual rights of the parties immediately before the court, with only accidental regard for the interests of the public at large or the exigencies of social policy. . . ."[1]

On the whole, the New Deal succeeded in impressing these attitudes on the federal judiciary by the end of Roosevelt's second term. Fortified by the rapid accession of Roosevelt appointees after 1937 (eight in four years), the Supreme Court repudiated volumes of constitutional precedents with astonishing speed and directness. Little more was heard of a constitutionally-guaranteed liberty of contract, or of the other nineteenth-century doctrines that had once been invoked against economic regulation. No problem, it seemed, was so clearly the province of the states or so clearly local in character that the Supreme Court would not sanction a federal response. No delegation of authority to administrators was too open-ended for the courts to accept, and few administrative rules too arbitrary

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to uphold. By the 1940s and 1950s, the watchword in judicial decisions was deference to administrative expertise, and the role of the judiciary became largely passive.

The wider significance of *Brown*

Conventional wisdom traces the reemergence of judicial power back to the Supreme Court's historic 1954 decision in *Brown* v. *Board of Education*. In hindsight, the *Brown* decision has indeed assumed the dimensions of a founding myth, the *Marbury* v. *Madison* of the modern judiciary. To the defenders of judicial activism in the 1970s, *Brown* became the shining model of the proper judicial role—breaking through official timidity and political deadlock to champion the cause of the oppressed—and the ultimate rejoinder to all arguments for judicial restraint. Even in scholarly debate on technical questions of court jurisdiction or procedure, *Brown* eventually achieved the status of a definitive argument-stopper. As Owen Fiss (himself a passionate advocate of judicial activism) has observed, it became enough by the late 1960s to show that a traditional jurisdictional or procedural norm conflicted with *Brown* to prove that it could no longer be maintained.

The power of *Brown* derives largely from the abhorence with which all decent people regard the system of racial segregation that *Brown* attacked. But the authority of that decision also owes much to the deft way in which it twisted traditional jurisprudence to the perspective of the welfare state. *Brown* did not simply overrule *Plessy* v. *Ferguson*, the notorious 1896 decision that established the doctrine of "separate but equal." It also cast the meaning of constitutional limitations in a new light, encouraging the judiciary to play an ambitiously new role in managing the welfare state.

However lamentable the result, the *Plessy* case came to the Court in a perfectly traditional way. Plessy was arrested for violating a Louisiana law requiring "colored" passengers to be seated in separate coaches on railroad trains. The Supreme Court, to its eternal disgrace, held that the Louisiana staute was a "reasonable" restraint, "enacted in good faith for the promotion of the public good." But the Court took for granted that the central issue was the justifiability of such state coercion. It merely noted the provision for "equal" accommodations for "colored" passengers as evidence of the state's "good faith," confirming that enforced separation in this context was a "reasonable exercise of the police power" of the state. Even Justice Harlan's celebrated dissent in *Plessy* framed the issue,

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in the characteristic mode of nineteenth century jurisprudence, in terms of "the principles of constitutional liberty." "The fundamental objection to the statute," he wrote, "is that it interferes with the personal freedom of citizens . . ."

The *Brown* case, by contrast, was a class action by black students who charged that education in segregated schools was necessarily inferior to that of white students. The Supreme Court went out of its way to treat the case as a problem of inequality in the provision of public services, rather than a question of state coercion. Thus, the Court began by noting that the status of public education had greatly changed since the enactment of the Fourteenth Amendment in the aftermath of the Civil War. "In approaching this problem" today, the Court stressed, we "must consider public education in the light of . . . its present place in American life throughout the Nation. . . . In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." The Court's reliance on social science evidence, purporting to demonstrate that segregation "has a tendency to [retard] the educational and mental development of negro children," was not a gratuitous embellishment, as has sometimes been claimed, but a central link in the argument, once the issue was framed in terms of quality-of-service.

The Court's rhetorical strategy in *Brown* undoubtedly had something to do with the nature of the case—which was, after all, about the distribution of public benefits, not about state regulation of commercial activity, as in *Plessy*. But it would not have been impossible to treat *Brown* as a claim about personal liberty, adapting the argument of Justice Harlan's famous dissent in *Plessy*. Indeed the Court did precisely this in *Bolling* v. *Sharpe*, its decision striking down compulsory school segregation in the District of Columbia, handed down the same day as *Brown*. Since the Fourteenth Amendment prohibits only the states from denying "equal protection of the laws," the *Bolling* decision was forced to fall back on the Fifth Amendment's guarantee against deprivation of "life, liberty or property without due process of law." The decision read, in part: "Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper government objective and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty. . . ."

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But the Court was curiously uncomfortable with this line of argument, and it quickly dropped from sight in the developing case law. In the years immediately following the *Brown* decision, the Supreme Court struck down compulsory segregation in public beaches, public transportation, and public parks. Unable to discourse upon the critical importance of such public facilities "in American life throughout the Nation," the Court preferred to give no argument at all for these decisions: It simply declared these laws unenforceable in curt, per curiam orders.

By the late 1960s, the unfolding of desegregation law confirmed that *Brown* was not really concerned with the constitutional impropriety of compulsory assignment by race. Amorphous appeals to the need for educational equality, invoked against the assignment of students by race in 1954, could be invoked with as much logic fifteen years later to justify racial assignments and compulsory busing, measures avowedly designed to enhance the educational opportunities of blacks as a class. *Brown*, it turned out, was not even a bar to invidious racial exclusions in the distribution of public benefits, so long as these struck the Court as contributing to some well-meaning vision of social equality. In 1980, the Court upheld a "slap dash" rider to a congressional pork barrel bill (as Justice Stevens aptly characterized it) which set aside 10 percent of government public works contracts for the exclusive benefit of minority-owned businesses.[2]

The right to public assistance

In *Brown* the Supreme Court declared that "the opportunity of an education" was so crucial that "where the state has undertaken to provide it, it is a right which must be available to all on an equal basis." The Court, then, did not affirm a right to education per se, but a right to its equal delivery—whatever that might mean. Such open-ended reasoning about equality proved conveniently adaptable to state management of racial progress. But in time such slippery notions of "rights" also opened a far wider field of welfare state jurisprudence. The old jurisprudence had distinguished sharply between rights—which the government was absolutely obliged to respect—and privileges—which government could give or withhold on its own terms, at its own discretion. The approach taken in *Brown* seemed to license the Court to remodel every "important" welfare or benefit program to suit its own sense of fairness.

By the early 1970s, the Court had carried this logic to the point

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of rewriting eligibility standards for direct payment programs. In *Frontiero* v. *Richardson*, the Court held that special dependents' benefits available to men in the armed forces must also be available to women: It was unfair, the Court ruled, for Congress to assume that the wives of servicemen were more likely to be dependents than the husbands of women in the services. Sometimes the Court found that special financial benefits for women were acceptable, as compensation for past discrimination against the entire sex; in other cases, it insisted that Social Security or survivors' benefits available to widows must also be available to widowers.

In a string of cases in the mid-1970s, the Supreme Court decided that various welfare and survivors benefits available to legitimate children must also be available to illegitimate children on the same terms.[3] And in a 1973 decision—graphically illustrating the Court's aversion to any bias toward the traditional family in welfare provisions—the Court struck down a congressional enactment that had limited food stamps to households of related individuals.[4] This, the Court scolded, was an unfair exclusion aimed at "hippie communes." The Court was equally impatient with various state welfare provisions distinguishing citizens from aliens, though it eventually decided that Congress could indeed limit Medicare benefits to those with at least five years residency in the United States.[5] Like women and illegitimates, aliens were not to be treated differently from others (except sometimes, times best known to the Supreme Court).

In most of these cases, the Court did not even bother to inquire whether restrictive benefit formulas were the expression of an invidious or malicious governmental intent; much less did it try to explain why the democratic process could not be trusted to deal fairly with "classes" like "women" (or men) who comprise fully half the electorate. Nor could the Court be troubled to recall that the "equal protection" clause applies only to the states, as it went about enlarging eligibility formulas for one federal program after another on equal protection grounds. The Court simply assumed that extra funds would be appropriated to cover the new beneficiaries it created—as indeed they were.

In a number of cases, the Court preferred to see welfare restrictions as a threat to liberty, rather than to equality. Thus, beginning in the late 1960s, the Court overturned a series of durational residency requirements for various state welfare benefits, lest these restrict the "liberty" of poor people to engage in interstate travel. The Court did, however, allow reduced tuition at state universities to be limited to past state residents, because, after all, there were

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limits to what a state could afford to subsidize.[6] In a famous 1963 decision, the Court held that South Carolina could not deny unemployment benefits to a Seventh Day Adventist who had refused a series of jobs requiring her to work on her Sabbath.[7] To treat this woman as voluntarily unemployed, and therefore ineligible for the benefits, would violate her religious liberty. This did not, of course, mean that government must accommodate its benefit programs to *every* religious practice, but simply that the Court would "balance" competing claims and decide what was most fair. Relying on similar logic, the Court in 1980 came within one vote of declaring that the newly discovered constitutional right to an abortion *required* Congress to finance abortions for the poor through Medicare.

By 1978, Harvard law professor Laurence Tribe, one of the leading academic theorists of the new jurisprudence, could foresee the emergence of "a general doctrine . . . [which] recognizes for each individual a constitutional right to a decent level of affirmative governmental protection in meeting the basic human needs of physical survival and security, health and housing, work and schooling." He could already discern "strands of doctrine pointing in this general direction." But the Court's hesitations meant that the time for this had "not yet come" and so "constitutional lawyers must continue to struggle with less sweeping solutions and more tentative doctrinal tools."[8]

The old liberties, and the new

If the Court sometimes varied in its readiness to revise legislative judgments to protect the "liberty" or "equality" of welfare beneficiaries, it was quite firm and consistent in limiting the economic liberties of businessmen. The Court acknowledged no constitutional liberty to be free of unreasonable constraints on business or professional activity—that went out in 1937. Nor could the "equal protection" clause be invoked to challenge arbitrary distinctions among comparable businesses in economic regulation, even when the distinctions were meant to separate the politically well-connected from the less well-connected. After the 1940s, all such challenges (with one exception, itself subsequently repudiated) were rebuffed on the grounds that judicial interference in legislative balancing is "improper." Nor could those who paid for all these enlarged benefits raise any sort of constitutional objection against them; taxpayers were simply denied standing to make such challenges in federal court.

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The old judiciary, in keeping with its emphasis on private rights, had also denied standing to taxpayers unless they could show that a particular spending program had significantly increased their own individual tax bills. Post-New Deal courts were only too happy to maintain this barrier to questioning government expenditures. But the Warren Court made one revealing exception in 1968: Taxpayers should be allowed to challenge government expenditures aiding religion, even if their own tax stake in the matter were "miniscule." In this one area, the Court thought it vitally important to make sure that public funds did not get into the hands of the wrong beneficiaries. But in many ways the Court's activity in this area was quite consistent with the overall thrust of its new jurisprudence, despite the numerous doctrinal contradictions it had to swallow along the way. The Court had abandoned any serious pretense of protecting individual liberties, and had embarked on a fairly straightforward effort to remodel public programs to suit its own vision of social well-being.

It was only in 1947 that the Court first discovered that the Constitution prohibits state laws which "aid all religions," as much as laws which "influence a person to go to . . . church against his will."[9] On this basis it struck down non-compulsory prayers and Bible readings in public schools in the early 1960s, treating the mere fact of state endorsement for religion as a violation of "liberty," despite the absence of coercion. The Court later used taxpayer suits to strike down virtually every state or federal program that might incidentally benefit religious schools, or might make it easier for parents to send their children there. Neither direct grants to the schools, nor subsidies to teachers of secular subjects at the schools, nor tuition tax credits for the parents, nor even reimbursement to the schools for administering state mandated tests could be tolerated.[10]

Supreme Court opinions of the 1970s continued to cite with approval a 1925 decision holding that parents had a constitutional right to send their children to private or parochial schools. It even occasionally acknowledged that cost pressures were making it increasingly difficult for poor and middle income parents to exercise this right. But because the vast majority of private schools are religious schools, this remained one right the Court would not require —indeed would not allow—government to subsidize. At the very time it was ordering the extension of other welfare and subsidy programs on the barest of "equal protection" claims, the Court warned that allowing even very limited, indirect aid to religious

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schools would set a dangerous precedent: "We know from long experience . . . that aid programs of any kind tend to become entrenched, to escalate in cost, and to generate their own aggressive constituencies." At the very time the Court was sanctioning divisive racial preference schemes and explosive compulsory busing orders, the Court insisted that aid to religious schools would place too much strain on the political process: "The potential for political divisiveness related to religious belief and practice is aggravated in these . . . programs by the need for continuing annual appropriations and the likelihood of larger and larger demands as costs and populations grow."[11]

Interestingly enough, the Court was prepared to relax its intransigent reading of the First Amendment—and its fears of "political divisiveness"—to allow state and federal aid to church-related colleges. Chief Justice Burger was perfectly candid about the reason: "College students are less impressionable and less susceptible to religious doctrine . . . [while] college and postgraduate courses tend to limit the opportunities for sectarian influence by virtue of their own internal disciplines."[12] The Court could barely conceal its distaste for religious "indoctrination" of "impressionable" youth. In *Brown* the Court had rhapsodized about elementary and secondary education as "the very foundation of good citizenship . . . a principal instrument in awakening a child to cultural values . . . and in helping him to adjust normally to his environment." Plainly the Court had decided that religious schools were not well suited to such a mission. It preferred to put its trust in public schools—public schools heavily regulated from Washington.

Partnerships between courts and agencies

Brown proved to be a great milestone for the new judiciary, not only in its reasoning, but also in its subsequent implementation. For with this decision we see the first inklings of a new relationship between the courts and the growing administrative state—a collusive relationship in which mutually reinforcing actions would allow both parties greater influence over social policy.

The Court in *Brown* had made no pretense of deciding the rights of Linda Brown and other individuals: It was openly making grand policy for the nation. Thus, having declared school segregation in violation of the Constitution, the Court did not think it was obliged to order the practice to cease—in Topeka, Kansas, or anywhere else. Instead, the Supreme Court decided that lower courts should over-

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see a gradual transition to desegregation "with all deliberate speed." Linda Brown, herself an elementary school student in Topeka when the case began, had already graduated from a segregated high school before this "deliberate" policy had achieved any significant results.

The truth—and it is a truth that is too often obscured in the mythology of *Brown*—is that the Court's majestical pronouncement in 1954 achieved relatively little by itself. Only after 1964, when Congress finally enacted strong civil rights legislation that provided federal enforcement machinery, did the schools of the South really begin to move away from segregation. Only in 1969, with a powerful HEW bureaucracy in place behind it, did the Supreme Court suddenly lose all patience, demanding desegregation (by then meaning statistical integration) "at once," even if this meant disrupting classes in mid-term.

In fact, the evolving standards for "desegregation" owed as much to the HEW bureaucracy as did the timing of this great regulatory venture. Under the 1964 Civil Rights Act, HEW was authorized to withhold federal education grants to school districts practicing "discrimination . . . on the basis of race, color or national origin." Ignoring a variety of procedural safeguards built into the statute, HEW used its funding leverage to pressure southern school officials into "adequate" desegregation. This proved so effective at the outset that HEW rewrote its desegregation standards each year in the latter half of the 1960s, demanding more statistical integration each time. It was HEW that took the lead in repudiating "freedom of choice plans," though lower federal courts quickly followed in their own decisions on "constitutional" requirements. It was HEW, again, that pioneered busing schemes some years later, and again federal judges followed, often calling in HEW "experts" to design "remedial plans" in their own cases. The Supreme Court's refusal to order busing into northern suburbs in 1974 may have had something to do with HEW's refusal, during the Nixon administration, to blaze that most dangerous trail for the courts.

Such hands-off maneuvers between federal judges and federal agencies proved very effective in other contexts during the 1970s, particularly in the elaboration of social regulatory statutes. Courts would first defer to bold agency initiatives; then the agencies, invoking judicial decisions they had heavily influenced, would proceed to further extremes, while Congress stood passively to one side. Thus, in an informal 1970 memorandum, HEW suggested to state school officials that, as the Civil Rights Act explicitly prohib-

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ited "discrimination" on the basis of "national origin," it might also require special educational programs for non-English speaking students. In a 1974 suit by Chinese students against the San Francisco public schools, the Supreme Court cited HEW's interpretation of the Civil Rights Act in holding that San Francisco had a statutory obligation to provide "some" special remedial services. Within a year HEW was imposing elaborate bilingual education requirements—and citing the Supreme Court decision as *its* authority.

The Equal Employment Opportunity Commission came to rely extensively on such shell games with federal judges in developing its quota policies for private employment in the late 1960s. And the game has proven adaptable to many regulatory fields. The essential requisite is to allow private suits to supplement agency action, breaking new ground for the agency to follow. Some regulatory statutes explicitly provide for a "private right of action." The 1964 Civil Rights Act, for example, does expressly provide that victims of discrimination in private employment may independently sue employers if the EEOC is unable or unwilling to pursue their charges. But most federal regulatory statutes simply authorize agencies to enforce their provisions, without saying anything about enforcement by private parties. Until the mid-1960s, courts assumed that such statutes intended to make enforcement the exclusive responsibility of the agencies involved. One of the prime reasons for establishing regulatory agencies, after all, was to assure that controls were developed in a coherent and coordinated fashion, stabilizing the expectations of regulated interests, or at least providing a central source for their guidance and direction. Centralizing enforcement in the responsible agency also allowed Congress to maintain control over enforcement levels through the budget process. But beginning in 1964, the Supreme Court encouraged lower federal courts to find "implied rights of action" for private litigants in statutes that did not actually provide them.

The first case of this kind involved a provision of the Securities and Exchange Act. The Supreme Court decided that shareholders might sue a company for providing misleading information in a proxy statement, and collect punitive damages which need bear no relation to the amount of financial injury suffered by the shareholders. With this incentive, private securities lawyers proved only too happy to help the SEC in detecting—and progressively redefining—"fraud" in the securities markets. Lower courts quickly decided that other agencies, such as the Labor Department in its regulation of working conditions, could also use help from private

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enforcement actions. Within a few years, courts were discovering "implied rights of action" across the whole regulatory spectrum.

Not every agency, however, was happy to have the assistance of private enforcers (or, as they were sometimes described, "private attorneys general"). Private enforcement did lift some of the onus of regulatory expansion from the "responsible" agency—as well as from Congress—but it also restricted the agency's control over its own regulatory agenda, and over its capacity to reach efficient accommodations with regulated interests. Finally acknowledging these difficulties in the late 1970s, the Supreme Court did begin warning lower courts against the promiscuous creation of "private rights of action."

But by then it was too late to restore agencies to control of their own enforcement priorities. Many of the decisions finding "implied rights of action" rested on the assumption that the intended "beneficiaries" of regulatory legislation were "entitled" to these benefits, and accordingly must have a "right" to enforce their delivery. By the early 1970s, federal judges in many parts of the country were running entire school districts to enforce the constitutional entitlement to equal educational opportunity declared in *Brown*. They were not about to let the preferences of federal regulatory officials stand in the way of enforcing entitlements to newly improvised regulatory benefits. The reverence for administrative "expertise," so central to New Deal thinking, had worn rather thin by the late 1960s. So the federal courts, doubtless exhilarated by their active partnership in the desegregation struggle, moved readily into the role of senior partners in the administrative state.

Redistributing the "new property"

The concept of a statutory "entitlement" did not arise with *Brown* v. *Board of Education*, nor did it presage the collusion between courts and bureaucracy which was to come. In some ways, it was a natural corollary of welfare state rhetoric, with its insistence on the citizen's "right" to a decent standard of living. Thus the original Social Security legislation of 1935 provided that anyone who met the relevant eligibility criteria (or thought he did) could sue the Social Security Administrator to enforce his claim to benefits. In practice, the courts tended to be rather deferential to the factual findings and statutory interpretations of Social Security officials. But everyone understood from the outset that this appellate authority gave the last word on Social Security "entitlements" to

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independent courts, rather than to the officials in charge of the program. In this sense, Social Security "entitlements" (and an increasing variety of other welfare benefits) were assured legal protection analogous to that accorded private property.

But for some decades after the New Deal, the analogy could cut both ways. The courts did not presume to accord business property or economic liberty any more protection than regulatory statutes had allowed. They might occasionally overturn a regulatory imposition for exceeding what the statute authorized, but they would no longer question whether the Constitution set limits on what legislative enactments *could* authorize or require. In the same way, courts might overturn administrative decisions in enforcing statutory "entitlements," but would hardly presume to revise the statutory standards themselves. As late as 1960 the Supreme Court readily upheld a recent Congressional enactment denying Social Security payments to those deported for "subversive activity."[13] The Court dismissed the argument that this constituted punishment without trial, since "the sanction is the mere denial of a noncontractual government benefit. No affirmative disability or restraint is imposed." Moreover, the Court noted, "engrafting upon the Social Security System a concept of 'accrued property rights' would deprive it of the flexibility and boldness in adjustment to everchanging conditions which it demands."

Within a few years, of course, the Supreme Court swung around to the view that *courts* could display as much "boldness" as legislators, and were perfectly justified in revising legislative judgments about how much "flexibility" to retain in benefit standards. It was hardly surprising, then, that as the Court began rewriting eligibility criteria for welfare statutes in the late 1960s, it also decided to improve the mandated procedures for administering these programs. This was one more way in which the new senior partner began asserting its control over the shape of the welfare state. In a celebrated 1968 decision, the Supreme Court held that welfare recipients could not have their benefits withdrawn without a formal administrative hearing *before* any action was taken.[14] Since "entitlements" were the equivalent of "property," the Court reasoned, they must be protected by the constitutional prohibition against denial of "life, liberty or property without due process of law." It was not enough to allow aggrieved claimants to contest the withdrawal of benefits after the fact. The Court resolutely brushed off pleas that the delay and expense of formal hearings would divert welfare resources from their primary function and

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might make welfare officials overly cautious in admitting new applicants to the rolls. This was a matter of constitutional right.

This reasoning was quickly adapted to an astonishing range of "entitlements" (or "new property," as legal commentators began to call them). In its enthusiasm, the Court failed to examine whether the statutes actually provided for judicial review of benefit denials, or even if the statutes actually created entitlements. Not only direct payment programs, then, but a variety of administered services and benefits were brought under "due process" protection. In 1975, the Supreme Court ruled that attendance at public schools was also a form of "entitlement" equivalent to property, and held that unruly students could not be suspended or expelled without a prior, formal hearing. This may have hindered school officials from removing disruptive students, thus jeopardizing the educational "entitlements" of other students—but, again, the Court saw constitutional rights at stake. In other cases, the Court interpreted the due-process guarantee to prevent state officials from revoking a driver's license, cancelling a convicted criminal's parole or probation, or failing to renew a state college instructor's contract without a prior hearing.[15]

By the mid-1970s, however, the Supreme Court had begun to acknowledge limits on the extension of constitutional hearing rights. Thus it declined to order administrative "due process" for the transfer of an inmate to another state prison, or for the firing of a city policeman—and, most incongruously, for the termination of disability payments by the Social Security Administration.[16] Lower federal courts then began to develop complex balancing tests—weighing the recipient's interest in the benefit against the state's interest in "flexibility"—to determine which administrative decisions would trigger "due process" safeguards and how elaborate the procedural safeguards must be.

Entitlements to regulatory benefits

In the meantime, the "due-process revolution" was carried with scarcely a second thought from personal benefits to collective benefits, from individual "entitlements" to regulatory expectations. Administrative law had always recognized the obligation of regulatory agencies to afford "due process" to individual property interests directly threatened by regulatory actions. By the late 1960s, lower courts had begun to demand that the intended beneficiaries of regulatory action also be accorded the right to participate in, and

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even initiate, administrative hearings. The right to be heard, however, could not assure that administrators would listen, so lower courts also began to relax standing requirements to make judicial review available to the intended beneficiaries of regulatory programs, when they claimed their interests had been neglected. One of the earliest cases involved an activist church group that had petitioned the Federal Communications Commission (FCC) to withdraw the license of a particular Mississippi broadcaster for inadequate service to black listeners. The D.C. Court of Appeals insisted that the FCC must grant the group a hearing. And, after the hearings, when the Commission still decided to renew the broadcaster's license, the court overruled the decision on appeal by the church group, and ordered the license withdrawn on its own authority (an authority nowhere evident in the Federal Communications Act).

In 1970 the Supreme Court threw open the courthouse doors to such challenges, holding that standing should be accorded to anyone claiming "injury" from an administrative decision, who was "arguably within the zone of interests to be protected by the statute" involved. As subsequent cases made clear, the injury could be psychic or intangible and certainly could be relative.[17] Typically, the plaintiffs' complaint was that their "interests" were not *adequately* considered, not that they had been altogether neglected. In implicit acknowledgement of the complexities of regulatory decision-making, the courts did not often invoke the rhetoric of "rights" or "entitlements" in these cases, more often overturning new rules or decisions on procedural rather than substantive grounds. But the impulse was essentially the same. In plain language, the underlying theory was that, if Congress intended particular interests to benefit from a regulatory statute, administrators must answer to the courts if these interests did not benefit as much as they might. And if "the interests to be protected" were indistinguishable from the interests of the public at large, that was certainly all right with the courts. This is the typical situation in litigation brought by environmental and consumer groups, and such "public interest" groups proliferated with remarkable speed under the new dispensation in administrative law in the early 1970s.

It is true that in a few environmental statutes of the early 1970s Congress explicitly authorized "citizen suits" to force the Environmental Protection Agency to fulfill its statutory "duties." No federal judge seems ever to have questioned whether Congress actually had the authority, under the Constitution, to delegate its own oversight responsibilities to the federal courts in this wholesale man-

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ner. In fact, the courts had begun to expand rights to initiate hearings and appeal administrative decisions even before Congress authorized this. And, as with "private rights of action," the courts never regarded the appearance of expanded participation or review provisions in some statutes as any reason to deny these rights where they were not provided by statute. Indeed many legal commentators took to describing the "new administrative law" of the 1970s as a delayed response to the demise of the old non-delegation doctrine after the New Deal. If statutes granted overly-broad discretion to administrators, it was said, courts must play a more active role to ensure that this discretion was not abused, creating procedural safeguards at the administrative level and demanding reasoned consistency in administrative decisions. In fact, such arguments did allow business lawyers to trade precedents with "public interest" groups in obtaining ever lengthier and more elaborate hearings in regulatory rule-making.

But if one looked at the larger picture, this sudden enthusiasm of federal judges for regulatory due process and administrative consistency was rather hard to take seriously. At the same time that appellate judges were improvising such elaborate safeguards for regulatory decision-making, individual district court judges were taking on the direct management of school districts, mental hospitals, and prisons. In such cases of direct judicial administration, the judges appointed expert consultants and heard community "representatives" only as they pleased—and proceeded to ignore their advice as they pleased. And when such cases were appealed, the appellate judges invariably deferred to the district judge's mastery of the "complex factual circumstances," rarely subjecting remedial orders and implementing procedures to any serious scrutiny. To this day, the Supreme Court still finds itself too busy to review one of these institutional reform cases and clarify which specific constitutional rights are involved and what the limits of judicial power may be in enforcing them. Somehow the better law journals, filled with discussions in praise of "public interest" representation throughout the 1970s, have had nothing to say about the problem of excessive discretionary power or the "due process" claims of "the public" in *these* cases.

Even in the regulatory context, the burgeoning of procedural safeguards turned out to be small consolation for opponents of big government. Business lawyers could exploit the expanded opportunities for procedural fencing, and sometimes delay the imposition of particular new rules or constraints to the advantage of their

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clients. But this did little to stem the extraordinary tide of regulatory expansion during the 1970s. And it is hard to believe that anyone ever expected it to: The main function of these elaborate rituals was to reassure Congress that businesses and other regulated entities would somehow be treated fairly, without Congress itself having to specify what fair treatment might require. And when these administrative procedures are insufficient, judges will order whatever they like. For example, after a decade of administrative hearings on the issue, Judge Abner Mikva of the D.C. Court of Appeals recently ordered the Department of Transportation to impose airbag requirements on the auto industry. From his position on the bench Mikva was able to go much further in vindicating the "consumer's interest" (as he saw it) than he had been as a mere congressman during the 1970s.

Legal realism inverted

Cynics have argued that these trends in modern jurisprudence simply reflect a shift in the political allegiance of the judiciary, realigning the federal courts with what they have perceived as the dominant political forces in the country. The triumph of the New Deal, it is said, forced the courts to abandon their Republican business constituency, with its enthusiasm for limited government and the rights of property. In the decades after *Brown*, the courts simply found a new outlet for judicial activism, serving Democratic or Great Society constituencies of minorities, poor people, and regulatory enthusiasts. There is obviously a great measure of truth in this. But, in the end, such a narrowly political interpretation claims both too much and too little.

It claims too much, because a non-representative institution like the federal judiciary may have biases, but it cannot have true constituencies. Thus, there will be busing in Boston whether black voters there want it or not. The narrowly political interpretation also claims too little, because it misses the most decisive factor in the change: The crucial factor is not that the judiciary has adopted the constituencies of the welfare state, but that it has absorbed the philosophy of the welfare state.

What, after all, did President Roosevelt mean when he spoke of "the right to a useful and remunerative job" or "the right to a good education"? Plainly, he did not mean to commit the government to precise, enforceable duties when he called for a "second Bill of Rights" to guarantee such claims. The architects of the New Deal

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were particularly emphatic that personal rights must be balanced against social needs. The New Dealers were not about to endorse fixed, absolute claims to new government benefits, any more than they endorsed fixed and absolute claims to the old rights of property. Calling government assistance a "right" was simply a means of highlighting its moral urgency (and perhaps of preempting political debate), not of tying down expert policy makers. Respect for this philosophy rendered the judiciary rather passive for almost two decades after the New Deal. It is the internalization of this philosophy by judges, spurred by the thrilling precedent in *Brown*, that has given us the activist, ubiquitous judiciary of recent decades.

Brown seemed to show that judges, too, could relate complex social realities to moral claims for government assistance, by "socializing," as it were, the traditional judicial focus on individual rights. Henceforth, legal "rights" need not be limited to discrete, preemptive claims against the majority, but might be related to anything that seemed socially useful. This perspective explains the curious oscillation of modern jurisprudence between a crass utilitarianism and a sanctimonious dogmatism about "rights." This explains the Supreme Court's readiness to invoke principles it cannot possibly, and does not really, try to apply with consistency. This explains the readiness of the Court to tackle issues—like the proper level of government connection with "religion in general"—that cannot possibly be conceptualized in terms of the "rights of individuals." This also explains the readiness of lower courts to enter into active partnerships with regulatory administrators, and even to undertake the direct administration of public institutions on their own. There is no longer any essential difference in the perspectives of judges and administrators—except that judges can congratulate themselves on being less vulnerable to political pressure.

This is not to say that the old jurisprudence was always a model of formal consistency. Eager to show that judicial protection of private rights was quite compatible with effective government, the old judiciary was often inclined to stretch its doctrines and discover strange exceptions. But the chief complaint of "realist" critics in the 1920s and 1930s (such as Jerome Frank and the young Felix Frankfurter) was not against inconsistencies in constitutional doctrine, which they noted simply to underscore their argument that "the law" was not, and could not be, a fixed abstraction. Their central complaint was precisely that established doctrines were too rigid and formulaic, that constitutional law had purchased an artificial clarity by blinding itself to the complexity of modern so-

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cial conditions. A modern industrial economy required expansive federal powers and an administrative apparatus with wide discretionary authority: Outdated constitutional formulas could not be allowed to stand in the way, the realist critics insisted. And they derided the old Court's solicitude for the "liberty of contract" of the working man, a purely formal liberty which, as they scornfully noted, could only be taken seriously by judges with no understanding of social reality.

The modern judiciary has simply absorbed the lesson of the realist critics and inverted its original point. In the decades since *Brown*, the judiciary has decided to embrace "social reality," rather than renounce judicial power. The modern judiciary has no patience with formalities when social justice is at stake. In *Brown*, the Supreme Court cited social science evidence to prove that segregated schools were "inherently unequal." Thereafter it recognized that treating students in a color-blind manner would provide only formal equality. So it then required racial assignments, sanctioned experiments with compulsory busing, and now approves special privileges for minorities. The Court has also recognized that confining its attention to racial discrimination would involve a purely formal distinction which would blind the judiciary to the claims of other needy groups. But here, too, the Court has seen that rigid norms would be incompatible with a due sensitivity to the social complexities involved.

Can courts administer the "just society"?

Along the way, of course, the courts have also come to recognize that distinctions between private property and public benefits are largely dispensable formalities. So, too, are the traditional distinctions between private rights and the public interest, between judges and administrators, even between judges and legislators. The notion that representative bodies are truly or fairly representative is simply one more formal presumption, not to be taken too seriously. Courts now intervene wherever they think they can improve the status quo, whether or not a case involving a distinct private right is presented. Above all, the modern judiciary has recognized—having been well tutored in this by the New Dealers—that "law" need not be clear or consistent to be effective or legitimate. Constitutional and administrative law have become hodgepodges of "balancing tests," "rebuttable presumptions," "preferred values," and free-floating precedents for occasional seasons. This

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cavalier attitude toward law is simply the functional correlative of the cavalier attitude toward "rights" in the jurisprudence of the welfare state.

The welfare state has been driven forward by the demand for "social justice," an amorphous concept that has less to do with the blame or merit of individuals than the distribution of benefits between classes. "Social justice" is concerned with misfortunes or inequities that society might ameliorate, but cannot blame on any particular culprit. The old judiciary was preoccupied with legal guarantees of personal autonomy, regarding clear and definite laws as the prime bulwark of personal autonomy. It did not presume that "social justice" was something that could be determined by judges, and was always wary lest government measures to this end should impinge on personal autonomy. The new judiciary is only too happy to assist in the elusive quest for "social justice." It has come to see the Constitution as "a reasonable approximation of justice" (in Ronald Dworkin's phrase) rather than a legal framework for limited government. Almost anything which runs counter to its vision of the "just society" may thus come within its reach.

The change is equally evident in private law. Contract law was derided by many scholars in the 1920s and 1930s for its artificial clarity, but the right to enforce a contract has now become so riddled with judicially-created exceptions and qualifications in the name of fairness that one can rarely be sure when a contract will actually be enforceable. Similarly, strict notions of causality and fault have been gradually eroded in tort law so that someone with more money—usually a corporation—can be ordered to compensate victims of almost any accident or misfortune. Perhaps this is more in accord with "social justice" but it certainly affords much less predictability: It is difficult to know how to go about one's business without risking intrusive or costly suits.

The new judiciary derived much of its confidence from its struggles with southern racism. Even in this area, however, the judiciary borrowed still more of its confidence from a federal bureaucracy that it once nurtured, and now presumes to direct. And in policy fields quite removed from "civil rights," the federal judiciary, with its open-ended mission, has enjoyed a curiously symbiotic relationship with the federal bureaucracy, and its open-ended mandates.

In recent years, the intellectual respectability of federally-directed solutions has faded somewhat, and the Supreme Court has shown signs of caution and irresolution. But it is far too late to restore the old jurisprudence. The judges will just have to muddle

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along. The judges are often arbitrary or oppressive in their muddling course, but what more can one ask of officials with no law to guide them?

NOTES

[1] John Dickinson, *Administrative Justice and the Supremacy of Law in the United States*, (New York: Russell & Russell, 1929), pp. 29-30.
[2] Fulilove v. Klutznick, 448 U.S. 448 (1980).
[3] E.g., Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164 (1972); Jimenez v. Weinberger, 417 U.S. 628 (1974); but also Mathews v. Lucas, 427 U.S. 495 (1976), upholding a Social Security Act provision disadvantaging illegitimate children.
[4] U.S. Department of Agriculture v. Moreno, 413 U.S. 528 (1973).
[5] Graham v. Richardson, 403 U.S. 365 (1971) [welfare payments]; Sugarman v. Dougall, 413 U.S. 634 (1973) [public employment]; but also Mathews v. Diaz, 426 U.S. 67 (1976) [upholding residency requirements for Medicare].
[6] E.g., Shapiro v. Thompson, 394 U.S. 618 (1969) [welfare payments]; Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) [free medical care]; but also Starns v. Malkerson, 401 U.S. 985 (1971) [upholding durational residency requirements for in-state tuition benefits].
[7] Sherbert v. Verner, 374 U.S. 398 (1963).
[8] Laurence Tribe, *American Constitutional Law*, (Mineola, N.Y.: Foundation Press, 1978), p. 574.
[9] Everson v. Board of Education, 330 U.S. 1 (1947), held that the Fourteenth Amendment's guarantee against denial of "life, liberty or property" prohibited states from "establishing religion." The old court had not found that even the First Amendment ("*Congress* shall make no law respecting an establishment of religion") would bar Congress from giving aid to religious institutions if they were also providing valued secular services. Bradfield v. Roberts, 175 U.S. 291 (1899).
[10] Lemon v. Kurtzman, 403 U.S. 602 (1971); Meek v. Pittinger, 403 U.S. 602 (1975); Levitt v. Committee for Public Education, 413 U.S. 472 (1973).
[11] Committee for Public Education v. Nyquist, 413 U.S. 756 (1973); Lemon v. Kurtzman, 403 U.S. 602 (1971).
[12] Tilton v. Richardson, 403 U.S. 672 (1971).
[13] Fleming v. Nestor. 363 U.S. 603 (1960).
[14] Goldberg v. Kelly, 397 U.S. 254 (1970).
[15] Goss v. Lopez 419 U.S. 565 (1975) [school attendance]; Bell v. Burson, 402 U.S. 535 (1971) [drivers license]; Morrissey v. Brewer, 408 U.S. 471 (1972) [revocation of parole]; Gagnon v. Scarpelli, 411 U.S. 778 (1973) [revocation of probation].
[16] Bishop v. Wood, 426 U.S. 341 (1976) [firing policeman]; Meachum v. Fano, 427 U.S. 215 (1976) [prison transfer]; Mathews v. Eldridge, 424 U.S. 319 (1976) [Social Security disability benefits].
[17] In SCRAP v. U.S. 412 U.S. 669 (1973), for example, a group called Students Challenging Regulatory Agency Proceedings was granted standing to challenge ICC approval of railroad rate increases on the grounds that higher rail rates might discourage the use of recyclable products, thereby producing more litter, thereby "injuring" the students involved by diminishing their enjoyment of the environment.

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Welfare and the New Dignity

CLIFFORD ORWIN

ONE hallmark of recent liberal thinking about social welfare has been an insistence on the equal "dignity" or "worth" of every member of society. If this view does not sound wholly new, that is because it is not. Liberalism has always taught that all men are created equal, and has always affirmed the dignity of the ordinary man.[1] But it both has and has not asserted the equal dignity of all men, ordinary or otherwise. By this I do not mean that the liberal tradition has hedged, but rather that it has made distinctions. It has held, in effect, that as there is a basic sense in which all of us are of equal worth, so there is another in which we are not, and that respect for this distinction is the mark of a liberal polity.

The newer liberalism denies this distinction, urging a simplified version of dignity in support of an expanded one of "welfare." Dignity is a good part of what the welfare state is about these days. It is not only that we are admonished to treat all of its clients with dignity. Leading social theorists also tell us that the cause of dignity itself requires a vast expansion of the welfare state, viewed

[1] I will speak throughout of liberalism in its broadest sense, as the general outlook underlying liberal democracy; not as a term of partisan distinction but as describing that consensus which defines the context within which partisanship occurs. This is the only sense in which the term is still useful today.

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as the source of our sense of dignity. Yet in their zeal to legitimate expanded redistribution in this way, they contrive, unwittingly, to delegitimate liberal society.

Dignity in early liberalism

Early liberalism denied, and broke with all previous outlooks just by denying, that any man is sufficiently worthy, by nature or by grace, to rule others without their consent. As Jefferson proclaimed in a memorable letter:

> All eyes are opened, or opening, to the rights of men. The general spread of the light of science has already laid open to every view the palpable truth that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.

As for the grace of God, so for the grace of nature. In primary matters of political right, we must acknowledge one another as natural equals, equally free of obligations other than those to which we have consented, and equally endowed with inalienable rights that must be respected.

But like any dynamic way of life, liberalism came into the world not to debunk criteria of worth, but to establish its own. No man is to be deemed worthier than others—but each should strive to prove himself so: such is the founding outlook of liberalism. What resolves the seeming contradiction is a careful distinction of realms. Where the rights of man are considered, distinctions of worth have no place. That still leaves, however, plenty of room for them elsewhere.

Consider the so-called work ethic. Like every "ethic," or way of life, it is essentially a standard of dignity. In this it may seem at tension with the egalitarian side of liberalism, but the marriage of the two was assuredly no accident. They were, as the founders of liberalism thought, aspects of a consistent outlook, the two sides of the liberal coin.

John Locke, for example, from whom Jefferson had learned most about political equality, sang the praises of the "industrious and rational" at the expense of the "quarrelsome and contentious." He thus meant to deprecate the vocations of both religion and politics, and to promote those of labor, trade, and investment. And he thus drove home a crucial lesson about the liberal teaching on political equality: *Banned from "politics," criteria of worth and dignity were*

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to persist in "society." More precisely, they were to be reinterpreted so as to foster a new society, one dedicated to peace and unprecedented prosperity. They were, as Adam Smith wrote, to combine with other incentives to stimulate "active and enterprising founders . . . capable . . . of laying the foundation of so great an empire." While never all there was to liberalism, political equality and respect for the dignity of solid success have been the warp and woof of everyday life in liberal society.

As for the nobler side of liberalism, the very fact that we can so call it confirms its relevance to dignity. Liberals have always aimed not only at freedom but at fostering men worthy of it; they have valued the former at least in part because they have seen it as conducive to the latter. Added to this has been the pervasive hope that liberty would favor lofty achievements in all realms, shaping great individuals who would vindicate liberalism at the highest level. Add to this the long alliance between liberalism and Protestantism: The latter has always preached the equality of souls on the one hand, and a rigorous (and censorious) moralism on the other.

Dignity, then, is something about which liberalism has been of two minds. It has combined a doctrine of equal rights with an emphasis on unequal achievements. Its great and historic innovation was a this-worldly teaching of equality, but it is questionable whether that teaching was really meant to penetrate the marrow of our bones. Liberalism retained the notion that some things were more worth doing than others, and that worthy deeds conferred superior worth on the doer. Full dignity was earned, not born.

Which is not to deny that liberalism, especially in America, has been egalitarian even as regards full dignity. It has been so, however, not in conceding dignity to all, but in placing it *within the reach* of all. Dignity was yours when you achieved that modest well-being presumed within the grasp of honest effort. Dignity depended on becoming self-sufficient in meeting one's duties to family, church, and community, and crowned the often laborious ascent from shanty to lace curtain.

That the American notion of earned dignity was so egalitarian may help explain why it was so censorious as well. There was no excuse for not shaping up. And if you did not, nobody tried to make you feel good. (Indeed, early American therapy—e.g., the "penitentiary"—was designed to make the patient feel bad.) Usually the best you could hope for was that someone would set out to reform you. We have welfare offices adorned with sun-yellow

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"Smile" stickers; our forefathers had the temperance movement. A strong sense of the dignified implies a strong sense of the shameful.

The welfare state as the dignity state

"Welfare" is a curious term. It denotes something this side of happiness, but well beyond a mere guarantee of the right to pursue it. "Welfare rights" are not quite "happiness rights"—they are dignity rights.

Just consider current discourse. The welfare state claims to enable us all to live "in dignity"; this then becomes the standard for its allocation of other goods. (Sometimes it is said to provide "human services" designed to meet "human needs," but on scrutiny the measure of these needs proves to be dignity.) Nor is this a recent development: It is for restoring their dignity that many people so love FDR. It was with the New Deal that dignity became a federal concern, and this is the banner under which the welfare state has marched onward since.

Our notion of welfare, then, depends on our notion of dignity and has reflected its complexities. "Earned" dignity in particular has both nourished the welfare state and constrained it. It has nourished it insofar as we have identified poverty with indignity, and justice with an "equal opportunity" to escape both. It has hampered the welfare state insofar as it has continued to identify dignity with self-reliance, and indignity with dependence.

Only with the triumph of liberalism in the West did poverty come to count as something shameful, and avoidance of indigence take its place as the standard of everyday aspiration. The Middle Ages had taken it for granted that the poor would always be with us, because most of us would always be poor. More important still, poverty was deemed a noble choice, a dignified expression of Christian humility. Even kings aspired to die poor, in the sanctity of monastic rigors.

For liberalism, on the other hand, dignity has depended on success at avoiding poverty. It has required resignation, not to privation, but to the efforts needed to outdistance it. It has depended on proving oneself equal to life's opportunities. This is one reason it has been incumbent on liberal society to multiply those opportunities—and also why the dynamic of liberalism eventually leads to the welfare state.

"Equal opportunity" is the most moderate way of conceiving "welfare." The aim of the moderate welfare state, of which I take

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the New Deal as the model, is as much "equality of result" as "equality of opportunity" requires, or as high a ceiling for each as is compatible with a solid floor for all. In addition to equalizing (or more properly, generalizing) opportunity, such a welfare state secures dignity for workaday lives. (As Samuel Beer has argued, the two most characteristic achievements of the New Deal were the Wagner Act and Social Security.)

Such a welfare state is moderate not least in defending the common-sense notions of dignity and desert which can be said to have inspired it. Men who want to prove their solidity may lack the opportunity; men who have done so may face a miserable old age. Both deserve to live "in dignity." A moderate welfare state does not quarrel with inequalities *per se*, but with entrenched economic disparities which threaten to crush those of ability and effort. (This is what FDR meant by "economic royalism.") The moderate welfare state, like the notion of "equal opportunity" itself, implies acceptance of the notion of earned dignity. It does not deny—indeed, it presupposes—that public policy should promote equal chances to achieve unequal things, and to reap the fruits thereof in pride as in other respects. It neither questions the reality of distinctions of merit, nor doubts that these are *ipso facto* distinctions of worth.

The New Dignity

Formerly, then, liberalism challenged each to prove his worth by demonstrating his merit. But today, in the hands of its best-known theorists, liberalism reassures us—and, equally to the point, admonishes us—that our worth does not depend on our merit. It thus replaces the equal opportunity for dignity with strict equality of result. Dignity becomes our inalienable birthright—one we cannot sell for a mess of pottage. On the contrary: society owes us the pottage in deference to our dignity.

In this suggestion we hear the murmur of many insistent voices: post-Christianity, sanctifying each soul but no longer willing to make any demands on it; cultural relativism, denying that any way of life is more dignified than another; compassion, uneasy with the severity of the older standards of dignity; the "therapeutic ethic," insisting that society has a duty to make us feel as good as possible. Added to these is dismay at the seeming intractability of poverty, especially among blacks. Together these voices raise a mighty swell of approval of the New Dignity.

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The New Dignity has fostered the transformation of the welfare state into what Marc F. Plattner has called the "redistributive state."[2] Advocates of such a state reject the principle of equal opportunity in favor of a principle of equal results, and they also reject the *practice* of equal opportunity for not achieving equal results. As I have noted above, our notion of welfare depends on our notion of dignity. The redistributionist notion of welfare—equality for its own sake—therefore requires a corresponding transformation of our notion of dignity.

The most powerful exponent of the new liberalism, and hence of the New Dignity, is John Rawls in his *A Theory of Justice*. Yet what first strikes the reader is Rawls's silence on the matter. He never discusses dignity, and alludes to what he calls "moral worth" primarily to dismiss its relevance to his theory of justice. Indeed, like most "liberal" theorists today, Rawls professes neutrality concerning the goodness (and so the dignity) of any given "life plan." In fact, however, some conception of human dignity is crucial to his system as a whole.

As is well known, Rawls's principles of justice emerge from a huddle in an "original position" shrouded by a "veil of ignorance." Among the things of which we are to imagine ourselves ignorant is the "life plan" that we will pursue; this is one way of preventing us from raising any claims on the basis of that plan. Instead, acting from rational self-interest, we seek social arrangements that will maximize our share of "primary goods"—those goods useful for the pursuit of any "life plan." We are also supposed to be ignorant of our status in the society-to-be: We may be top or bottom dogs. So reason dictates unanimous agreement in the original position that "all social primary goods . . . are to be distributed equally unless an unequal distribution . . . is to the advantage of the less favored." One principle of justice, then, is Rawls's celebrated "difference principle": that "social and economic inequalities are to be arranged so that they are to the greatest benefit of the least advantaged. . . ."

What is most striking in Rawls's theory is the severance of justice from desert. Justice does not respect desert, it merely determines it. We deserve only what the principles of justice assign us, and these, as we have seen, emerge from a proceeding in which concerns of desert are ignored. What we deserve has nothing to do with our deserts.

[2] Marc F. Plattner, "The Welfare State vs. the Redistributive State," *The Public Interest*, Number 55 (Spring, 1979): 28-48.

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The assault on earned dignity

In thus severing justice from desert as formerly conceived, Rawls takes a road common to most exponents of the New Dignity. The crucial point about this position is that it implies the complete disjunction of achievement from both dignity and desert. Dignity becomes something to which deeds are wholly irrelevant.

The argument for this position runs more or less as follows: All achievement must be ascribed to the nature and/or the education of the achiever, and he may rightly take credit for neither. As for his individual efforts, these are so much the product of outside forces as to lack all moral relevance. In short, anything in me to which I might ascribe my achievements—I am strong, I am qualified, I work hard—is not the morally relevant me at all. I cannot take pride in it or claim a right to reap its fruits. The real or rump "me" is no achiever; he just sits there. No human accomplishment, even (and precisely *inasmuch*) as it proceeds from ability and effort, is worthy of pride or praise, or comprises a claim of desert. There is no such thing as an earned lunch.

This much should be clear: To reject earned dignity is radically to reinterpret liberalism itself. To deny the moral relevance of achievement is to subvert above all the principle of equality of opportunity. Precisely insofar as equal opportunity reigns, Rawls seems to say, there gross injustice follows. Equal opportunity, then, must cede to equality otherwise conceived—to the "difference principle," whereby the achievements of each are harnessed directly to the advantage of all, and to the achiever only incidentally.

Not surprisingly, Rawls's approach to desert has encountered dissent from a number of persuasive critics.[3] It is more than doubtful, however, whether Rawls and the other partisans of the New Dignity themselves accept this approach, for their own case proves to rest on just the sort of claim they are attacking.

Again, this is clearest in Rawls, who puts his cards on the table. The huddle in the original position is one from which claims of worth or desert are excluded, and the results reflect this. But in fact, this is somewhat misleading. For Rawls is not a contractarian, for whom nothing but the self-interest of the participants is prior to the contract. Although the *principles* of justice emerge from a hypothetical contract, the contract itself is not the basis of the duty

[3] See Marc Plattner, "The New Political Theory," *The Public Interest*, Number 40 (Summer 1975): 118-128; Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974) pp. 224-227; Michael Zuckert, "Justice Deserted," *Polity* 13, Number 3 (1981): 475-477.

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to be just, nor does it control the question of those *to whom* justice is due.

Justice, according to Rawls, is due to all human beings equally by virtue of their possession of a "moral personality," which he defines as a capacity for conceiving a rational life-plan and for doing justice. This capacity is native to all human beings; it is what distinguishes them from other beings, to whom the principles of justice do not apply. In addition to grounding that claim of desert —an equal desert to be treated justly—on which the whole of Rawls's system rests, "moral personality" comprises his doctrine of human dignity. It alone is that in men which commands moral respect.

The problem should be obvious: Having rejected all claims to unequal desert based on "arbitrary" natural endowments, Rawls turns about and rests his whole claim on just such a natural endowment. Only *unequal* natural endowments are deemed irrelevant to desert. But this is, to use one of his terms, arbitrary. In demolishing all grounds for claims of unequal desert or worth, so has he demolished those grounds for such claims when equal. He cannot rescue the latter without at the same time rescuing the former.

Rawls's argument is typical of many others in that, having rejected the earned dignity of liberal achievement as in fact unearned, it stakes its case for redistribution on a patently unearned dignity. Having implied that real dignity must rest on real accomplishment, it proceeds to apportion full dignity wholly without regard to accomplishment. Such turnabout is *not* fair play. If our allegedly equal natural capacities for some good things are somehow deserving of respect, then Rawls must explain why as much is not due to our capacities for other good things, whether or not those capacities happen to be equal. He must also explain why only *capacities* deserve respect, regardless of whether their possessor has in any way developed them. (If he argues that such development, even if reflecting effort, may rest on some natural endowment, we must remind him that he can no longer discount natural endowments.) Rawls must explain, in other words, why the older liberalism, which sought to honor both the respects in which people were equal and those in which they were not, is inferior to his simplification of it.

The nature and uses of self-respect

Rawls's teaching on human dignity, while central to his work, remains largely implicit. Not so his teaching on self-respect. It fig-

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ures in his scheme as one of the "primary goods," and "perhaps the most important one." Self-respect, as Rawls rightly sees, is the salt without which other goods lose their savor. Whatever one's "rational life plan," it is no picnic unless one can live it with self-respect. It is the very first thing a rationally self-interested actor would seek to maximize, so, in Rawls's scheme, we agree to distribute it as we do other primary goods. In fact the whole structure of Rawlsian society is supposed to buoy equal self-esteem. And like all other commodities in a Rawlsian society, self-respect is distributed without regard to relative desert. Society owes us the conviction that our life is a worthy one and that we are worthy of it. Because we equally crave self-respect, we arrange a no-fault system for providing it. You scratch my back, I'll scratch yours.

Of course, matters are not quite that arbitrary; in order for this arrangement to be tolerable to Rawls, he must think that all human beings really *deserve* equal self-respect. However, this merely highlights the problem of his severance of dignity from merit. We are asked to accept a full portion of respect from others (as well as to bestow a full portion on them) simply for being human, regardless of where we have gone from there. Rawls thinks that equal unearned respect of this sort would powerfully buoy our self-respect. In fact, as social scientists among others have noted, the primary source of human self-esteem is a sense of accomplishment.[4] Rawls would deprive us of that sense, by depriving achievement of its dignity. In return he offers official recognition of everyone's equal dignity and worth—with tangible accoutrements, of course.

All this raises the question of incentive. That, at least, is something that our theorists take to heart; concerned as they are with redistribution, the last thing they intend is to kill the goose that lays the golden eggs. All they want is to strip him of the right to preen over them. They are willing to leave him just enough eggs to keep him laying—but on the understanding that his claim to these eggs is a wretched thing, devoid of moral standing. Here again the definitive formulation is Rawls's "difference principle."

Plattner has wondered whether ordinary people would tolerate economic inequalities stripped of all claims to intrinsic justice, and which therefore amounted to a "wholly undeserved bribe paid out of the pockets of the poor." Also worth pondering is the effect on erstwhile achievers of delegitimating desert. Thinkers such as Rawls may just be naive on the question of incentive. For one of the most

[4] See the evidence collected in Robert E. Lane, "Government and Self-Esteem," *Political Theory* 10, Number 1 (1982): 5-31.

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powerful incentives—only an economist would doubt it—is dignity itself.

Adam Smith observed long ago that what made the rational-acquisitor tick was not something material, but rather the honor that attended success. The solid citizen—by which I mean the hard-working, law-abiding citizen in any walk of life—does not delight in well-being alone, but in achieving a place in a community that accords respect to solid citizens. He cherishes his success because it bespeaks his merit to himself and to others. It is this sense of achievement which anchors his allegiance to liberal society. That is because it anchors his happiness *in* liberal society.

Now Rawls, it might be objected, is fully aware of the importance of self-respect. After all, he specifies it as first among the "primary goods" to be desired by every human being. He must then be cognizant of its power as an incentive. And as a "primary good" its distribution should be subject to the "difference principle." It should be available, that is, for use as an incentive. Achievers should be honored so as to spur achievement, and thereby enlarge the common store of goods for the benefit of the least advantaged.

Just as in the case of financial incentives, however, those who received greater respect for their achievements in Rawlsian society would know that they were getting it not because they deserved it, but only as an (unearned) incentive. They would know, in other words, that these honors were not honors. Such spurious respect would stimulate no one, least of all a man of self-respect. Applying the difference principle to self-respect confirms that you cannot separate dignity from merit.

Liberalism without achievement?

A Theory of Justice is but one of many recent attempts to free us from the notion of dignity that has shaped liberalism and has both informed and restrained the welfare state. It commands respect as the most ambitious and rigorous of these efforts. Liberal society could use a rigorous defense, but it is a dubious surgeon who saves the patient at the cost of his backbone.

Historically, liberalism has depended absolutely on the notion of the dignity of achievement. It has maintained this notion not only to foster riches, but as its principle for limiting them. It has regulated disparities of wealth in the name of equal opportunity, and regulated unearned increments of wealth to preserve the primacy of earning. Such a system need not balk at helping those in pov-

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erty. It is bound to rebel at doing so on terms that deny its own legitimacy.

Elaborate justifications of the New Dignity only ratify in theory what has long been evident in practice: that the rush to heap dignity on the "least advantaged" affronts that of the working stiff. It would be unjust to conclude that resentment at this affront is illiberal. In flatly denying the worth of achievement, the New Dignity assaults the dignity of happiness as liberalism has hitherto preached it—and without dignity there can be no happiness.

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The Culture of the Gentleman

KENNETH MINOGUE

Shirley Robin Letwin: **The Gentleman in Trollope: Individuality and Moral Conduct.** *Harvard University Press. 314 pp. $20.00.*

FEW things are more fascinating, and none more difficult, than to discover the hidden springs of national achievement. Among the achievements of the English-speaking peoples is the institutionalization of liberty. As an achievement which in modern times has saved them from such plagues as dictatorships and reigns of terror, it has been of particular interest to foreigners—especially, perhaps, to the French, whose own genius it has often been to explore the genius of other peoples. Montesquieu found liberty in England, Tocqueville democracy in America. Mrs. Letwin's concern with the English gentleman is an enterprise of a not altogether dissimilar kind. It is, indeed, hardly concerned with institutional generalization at all, but it acquires sharpness of focus from exploring the character of the gentleman in terms of the imaginative world created by Anthony Trollope in the nineteenth century.

Trollope was one of those splendid Victorian storytellers who created an entire social world. He was especially concerned with Church and State, and his narrative fluency has proved irresistible to the constructors of television series. Critics might cavil at the fact that his world was that of declining agriculture rather than the burgeoning industry of Victorian England, but they cannot cavil at his sociological range, which took in everybody from dukes to agricultural laborers. Trollope, then, provides Mrs. Letwin with a vast range of human types, all of whom are understood in terms of the morality of the gentleman. Yet for all this close focus of attention, her study is conceived in the widest possible terms. She seeks to bring to the surface the philosophical presuppositions of moral conduct as summed up in the term "gentlemanly." What surfaces is a theory of mind and morality whose roots can be found

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in the late middle ages. It is a theory which strikingly diverges from the mainstream of European moral thinking since Plato.

THE idea of the gentleman seems to have emerged from one of those fusions of a social status with a moral character—"villain" is another. Dr. Johnson in the eighteenth century dismissed as "whimsical" any other meaning for the word "gentleman" than "a man of ancestry," and thus drummed himself out of this desirable class of men. Mrs. Letwin opts wholeheartedly for a moral conception of the idea, and her concern is to highlight its specific Englishness. At the simplest level, the heroes of Hollywood films and popular literature have many gentlemanly characteristics. Such heroes have come to their own conclusions about life, are critical of the prejudices of those around them, and combine gentleness and courage in a way that gives them a special dignity. Phillip Marlowe, setting off down those mean streets, was a somewhat gentlemanly figure. It is difficult to imagine gentlemen without a long tradition of chivalric tales about heroes. But obviously the English have no monopoly on the heroic, and Mrs. Letwin's concern is with a highly specific variant of such heroes. This sort of gentleman is marked off by the manner in which he manages his own emotions, his simplicity, his conception of his own integrity, his ability to combine characteristics which, understood simply, appear to be contradictory, and perhaps above all by his continuing preoccupation with the coherence of his own life, thoughts, and actions. Developed into nothing less than a philosophy, the idea of gentlemanly behavior emerges as the compass point of English moral conduct.

Mrs. Letwin's gentlemen are independent and cooperative individualists, and we can learn something about them by noting the apparent paradox of combining such ideas. There is a discernible drift in current English usage on both sides of the Atlantic for the term "individualist" to denote a ruthless egoist careless of all communal values, including the feelings of others. Individualists are competitive like prisoners with a dilemma, rather than like gentlemen at cricket. Indeed, individualists may well be "professional" in the debased sense as summed up in the remark, "Winning isn't the main thing. It's the *only* thing." This network of misunderstandings, where "individualist" means selfishly impulsive, "competitive" means trying to do someone down, and "professional" simply means commercial, explains why it is now commonly thought that individualists cannot cooperate. Ever since Marx appropriated this account of the moral life of individualists and called it "capitalism" or "bourgeois society," European moral self-understanding has become understandably defensive—indeed, at times quite morbidly self-denigrating.

YET foreign observers—and, like Mrs. Letwin, they often see most of the game—have always been fascinated by the way in which the individualists of Britain have produced tough and enduring com-

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munities. Far from being merely selfish, many of the voluntary institutions they created have been philanthropic and reformatory. In disposing of their time and money, the individualists of the Western world have worked hard to build hospitals, free slaves, improve the poor, educate the illiterate, and change prison conditions; and for all their continual dissension and party strife, the states they created have seldom failed to find all the communal cohesion they needed when the dogs of war were unleashed. The identification of *community* with moral perfection is one of the more remarkable fads of modern times, and it could not survive a realistic study of how other civilizations treat the defeated and the outcast. The idea that you cannot be selfish if you are a communal animal, and that you can be nothing else as an individualist, is, for all its remarkable popularity, a foolish parody of the social life of Europeans, and a particular target of Mrs. Letwin's argument. The intellectual problem posed by this argument is, then, to explain a type of social cohesion which is most perfectly exemplified in English life, and which does not depend upon some sort of Rousseauian sacrifice of part of the self to some grander whole, such as the state.

The formal answer is that individualists are people capable of living according to law. It was not so much that they *obeyed* the law (for most laws are not commands) as that they learned, as the prophet Ezekiel puts it, to "walk in statutes." They learned to be independent disposers of their own resources, and while this form of independence may well have developed first among those with significant resources, it spread in time throughout the population; for, as John Locke observed, each man hath a property in his own person. In the eighteenth century, this capacity for independence (and for independent cooperation) was sufficiently striking to impress a foreign observer such as Voltaire, who deeply resented his own dependence upon royal and aristocratic caprice. But before it can turn into a moral ideal, such independence must become reflective, and the gentleman's distinctiveness emerges in the balanced and realistic way in which he comes to terms both with his independence of and his dependence on the community in which he lives.

Whilst making his own judgments, he is not given to imagining himself some lord of the intellect amid the mindless prejudices of the surrounding peasantry. He gives due weight to the customs of his *milieu* (and those of foreigners when he travels). He recognizes the indispensibility to human life of social prejudice, conventions, manners, and established institutions like the Church. From reflective self-knowledge emerges a sensitivity to the feelings of others which renders him reluctant to cause pain or offense—what Henry James described as the "dauntless decency" of the English. Such a sensibility may be found caricatured in Lord Chesterfield's insistence to his son that his behavior should always be pleasing, and it ought not to be confused with the type of moral character

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described these days as "conforming." For the gentleman, while respecting the space in which others live, is perfectly conscious of his own. In responding to the feelings of others, he is not markedly prone to guilt, or to a morbid sense of being the cause of the feelings of misfortunes of others, for this sense creates a parody of community. It destroys independence and individuality. What this set of characteristics means is that social combination among gentlemen is, where possible, founded upon exploring and developing the similar dispositions of others. For it is one of the more important scruples of gentlemanly behavior that such a person is averse to manipulating others, and has the intelligence to know when his actions may have that effect.

To sketch in the character of the gentleman thus far requires us to recognize that, considered in isolation as a moral ideal, the gentleman must look like a paragon, and his describer a prig. There is, further, so much that is old-fashioned in all this as to grate upon a contemporary sensibility. It all sounds, for one thing, rather sexist. It is characteristic of the cat and mouse game that Mrs. Letwin sometimes plays with her readers that she does nothing to discourage this possible irritation over long stretches of the book —and then pounces, as when, in a striking *coup de théatre*, she begins her chapter on the quite central theme of integrity with the words, "The most perfect gentleman in Trollope's novels is Madame Max Goesler."

Madame Goesler is not only female, but Jewish to boot. What she has abundantly is that decent sense of reflective self-limitations which is basic to the gentlemanly conduct of life. But as with most of these general characterizations the element of limitation is not quite what it seems. It is, above all, a disciplined refusal to snatch at something passionately desired if doing so would endanger the integrity of her whole personality. The ungentlemanly are thus more likely to seize certain sorts of opportunity, but they are also in danger of finding themselves increasingly committed to things they do not want. The gentleman moves through life in an orderly fashion, constantly repairing the tears and gaps in the fabric of life caused by passion and misfortune. Lacking a sense of their own coherence—perhaps, indeed, of destiny—the ungentlemanly are more likely to find themselves tossed and turned by changing circumstances, and thus divided from themselves.

The moral ideal of the gentleman can be understood as emerging from a set of beliefs about the human condition, and the most original part of Mrs. Letwin's enterprise is to make these explicit. They can best be understood by contrast with the Platonic rationalism which remains the dominant tradition of the moral understanding. The Platonic image of the moral life in the *Phaedrus* has reason the driver facing the problem of keeping the passions, some of them wild and rebellious, in order. The human personality

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is thus divided into a divine or rational part on the one hand, and a passionate, animal, earthy part on the other. This vision of the moral life has a tendency to generate pantheistic theological beliefs about the unifying divine or rational spirit of man as constituting a whole of which we are all parts. In a technological age such as our own, this is expressed in a view of human beings as items of botched or incomplete workmanship, in need of transformation by some superior technique or other; and nothing in the modern world has been quite as fertile as the variety of such suggested technologies: revolution, meditation, psychoanalysis, Zen, and so on. Almost anything suggested as an improvement in some sphere of life can take on overtones of this kind of humanizing technology—anything from dieting to Esperanto. Shakespeare's contemporary Fulke Greville, in a famous poem, thought the condition of humanity wearisome because man was torn apart between his passions and his aspirations, and much of the vitality of the modern world has been the search for a solution to human life thus construed.

But in the modern era an alternative view may be discerned which takes its beginnings closer to man as he actually is. It is skeptical without sliding into relativism, and it may be most easily recognized by the way in which it either transforms or discards reason as a key to the moral life. Montaigne was skeptical of all grand pretensions, and by his introspections vindicated an independent realm of the mind where the individual could cultivate an inner life. Hobbes, denying that any objective ideal like "the good life" could be found, explained civilization in terms of the obligations man voluntarily contracted. Hume said that reason not only was, but ought to be, the slave of the passions. In recent times Michael Oakeshott has been an elegant and penetrating critic of rationalism; he fits well into Mrs. Letwin's argument because of the way he combines metaphysical skepticism and a fascination with the human world. By contrast with the rationalist apparatus of order—the good life, the true community, the categorical imperative, and other such devices—human cooperation on this view is seen as emerging from the rationalized dispositions of human beings who manage their passions and impulses within a slowly changing framework of rules and conventions. Construed as a temperament, this attitude to human life may no doubt be found quite widely dispersed, but in English life it has at times acquired a kind of dominance. It may be detected in the English preference for empiricism both in philosophy and in practice, and on Mrs. Letwin's view it has shaped the character of the English novel. It may also be seen in the propensity of the English to debunk grandiose and ambitious projects of all kinds. What an individual does with his life is his own business, and revolution, as the overweening ambition to impose one's own personal enthusiasms upon a whole community, turns out to be the height of bad manners. Put Lady Bracknell and Lenin in the same room, and you have the picture.

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MORALLY, then, the opposite of a gentleman is the cad; but in philosophical terms, his opposite is the Platonic rationalist, or what Mrs. Letwin calls the self-divided man. The emergence of a continental intelligentsia with a vested interest in turning ideas into melodrama has given this form of rationalism a great fillip in recent centuries. Mrs. Letwin takes Stendhal's view of love as typical. For Stendhal, being in love was a form of irrational delight which can only be indulged by cultivating illusions about the beloved which cool reason could not sustain. Broadly—and it is indeed very broad—continental novelists are less interested in the small moral discriminations of life than in exploring the frontiers of sensation and the extremes of experience—crime and punishment, the *acte gratuite*, man's existential predicament, pacts with the devil, etc. The hard work of keeping all this metaphysical excitement at bay has made the English insular, and Mrs. Letwin thinks that they have thus conserved their real identity. She thinks that the world of the gentleman came to be eroded by the large scale importation of German ideas during the nineteenth century. Still, the English have not been totally submerged. What was Rupert Brooke pondering as he sat in the *Unter den Linden* in 1914? The Absolute? *Angst*? Space and Time? No, he was thinking of Grantchester vicarage, and honey for tea.

MRS. LETWIN is convinced that Christianity is one of the fundamental presuppositions of this whole manner of thinking, but what she means by Christianity is hardly what is thought and felt by the kind of Christian who feels himself a mere pilgrim in this world, one who feels that his real place is elsewhere. She takes the view that the fundamental innovation of Christianity was a view of the Creator as unimaginably remote from his creatures. This doctrine is often thought to have distorted human nature, by contrast with the supposedly life-enhancing nearness of the classical gods, and the equally classical view that, by virtue of reason, we participate in the actual divine substance itself. Mrs. Letwin finds this central postulate of God's remoteness to be liberating because it allows man to construct a human world in which God, in his remoteness, is not imagined to be forever meddling in human affairs.

Further, religion is the necessary context for the gentleman because, being a reflective spirit, he will think hard about the human situation and find himself faced with unanswerable questions about the meaning and purpose of life. "If it becomes too searching," we learn, "awareness of the human condition can destroy the balance of a mortal mind." Religion appears in this context as perhaps the only way in which sanity and searching reflectiveness can be combined. And in its institutional forms, it provides a concrete communal context which disciplines the moral life. To love religion but hate churches is the first step in the degeneration of the spiritual life into a branch of *haute couture*. What religion teaches us above

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all is not to kick against the pricks. It teaches us, in other words, the virtue of resignation.

The virtue of resignation is not likely to commend itself to a generation of people much given to hurtling around the world trying to save it from all the catastrophes that impend; but here again, it must be remembered that the gentleman is resigned to the human condition in general, and is far from inactive in relation to what he sees as the business of his life. In the era from which Mrs. Letwin has chosen her epitomes of this moral practice, gentlemen were not only pushing forward a transforming industrialism, but were out building empires, pondering the mysteries of nature, and exploring the unknown surface of the globe. It is thus characteristic of the gentleman to have made up his mind about the things that may be changed and the things that must be accepted. In explicating this complex set of judgments and practices, Mrs. Letwin has brilliantly illuminated both the morality and the philosophical presuppositions of a remarkable manner of life.

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Liberalism and Human Knowledge

MARK LILLA

Thomas A. Spragens, Jr.: **The Irony of Liberal Reason.** *University of Chicago Press. 455 pp. $23.00.*

Michael Sandel: **Liberalism and the Limits of Justice.** *Cambridge University Press. 191 pp. $29.50 hardback, $9.95 paperback.*

IT HAS become common, of late, for American professors of politics to write and teach about contemporary thinkers—philosophers, psychologists, literary critics—whose work seems unrelated to politics as conventionally understood. Over the past few years a good deal has been written about the political dimension of Wittgenstein's writings; technical debates within academic philosophy of science have been covered quite extensively in political science journals and books; and the great attention focused on the French deconstructionists and post-structuralists has even spilled over into politics departments. What are we to make of all this?

While most of these forays into contemporary thought have been hopelessly muddled and transparently trendy, there is something extraordinarily important going on here. For what is being expressed, however incoherently, is the conviction that the very foundations of modern thought—especially liberal political thought—

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are fundamentally unsound (and interestingly enough, that traditional Marxism can provide no substitute). The latest criticisms of liberalism have been *epistemological* ones, challenging the understanding of human knowledge with which we have lived since the Enlightenment. This is serious business. Or so it would seem, if we are to entertain the possibility that a revision of our views on a subject as abstract as "epistemology" might have quite revolutionary consequences in the realms of morals and politics.

Of course, the connection between "theories of knowledge" and political theory is not a simple and direct one. But in re-examining the nature of that connection, whatever it may be, we do return to the very roots of our philosophic tradition. It is in this sober spirit that some of the better works in contemporary political thought have been written: Some look back to the history of modern thought in order to explain how the coherent Enlightenment view of philosophical, scientific, moral, and political knowledge slowly came apart; others have been short philosophical treatises on the theoretical foundations of political knowledge.

Up until very recently, this mainly has been a "fringe" activity in Anglo-American political thought. To those on the "right"—Michael Oakeshott, Eric Voegelin, students of Leo Strauss—and on the "left" —followers of the neo-Marxist Frankfurt School—many of these recent works may seem naive and undeveloped, for both fringes have put forward more coherent critiques of modernity for some time (and share more than they admit). What *is* noteworthy about some recent critiques of liberalism—Thomas A. Spragens's *The Irony of Liberal Reason* and Michael Sandel's *Liberalism and the Limits of Justice* are two excellent examples—is that they have been conducted by writers who themselves appear to be liberals, and who show at least initial sympathy with modern liberal society.

THOMAS SPRAGENS'S historical account of the development of philosophical liberalism begins with what will turn out to be his conclusion: namely, "that the same liberal tradition that is heir to and protector of Western humanism has developed within itself tendencies that threaten human values." Thus the "irony" of the title. What becomes clear in this formulation of our contemporary political confusions is that Mr. Spragens is neither a conservative, a neoconservative, nor a radical, for none of these view politics with much irony anymore. He is a liberal who champions much of the history of liberal political practice—especially those aspects of American practice consistent with the vision of the *Federalist*—but finds himself unable to defend it within the framework of contemporary liberal thought. In other words, he is a liberal who wonders why the form of political life he *knows to be good* has come to be inconsistent with the stream of philosophic thought which originally gave it birth.

This formulation of the problem is sufficiently rare that the book is worth reading if only as a ballast in an age of "radical" histories.

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Spragens is in basic agreement with the radical historians, however, when he writes that in the history of liberal thought "the problem lies within the liberal conception of rationality itself." All seem to agree that it is the modern understanding of the basis of human knowledge which is problematic, and not merely the application of that understanding to politics.

Spragens is quite conventional, then, when he begins his account with the Cartesian and Lockean project of liberating human reason from the burdens of superstition, political repression, and church dogma. What is innovative is his characterization of Enlightenment thought as "political and moral Newtonianism." By this he means that the theological and teleological language which remained in the works of the period was not the result of confusions, censorship, or cowardice, as many modern readers assume, but was an expression of the firm belief that philosophy could, in Spragens's words, "illuminate Nature as it had been conceived in the classical tradition, with its teleological [i.e., purposive] order, by using the beacon light of the new methods." If Enlightenment thinkers thought themselves to be subversive at all, they were so only to the extent that they wished to extend to all men the capacity to use reason to discover the truths inherent in nature; the last thing they conceived of was the subversion of the very notions of truth, nature, or, most especially, natural *moral* truths. "Reason was to *unveil* the Good just as it was unveiling Nature."

This combination of modern and premodern conceptions of knowledge was not to last, in Spragens's view, for it was merely "new wine in old skins." And when the skins broke, the new wine flowed in several directions. In one direction, French positivists and English utilitarians exaggerated the scientific element of political knowledge, giving birth to the "technocratic tradition." Spragens very shrewdly puts Marx within this tradition, for the standard interpretation of Marx as an inverted Hegelian ignores how much he shared with his French and English contemporaries: namely, the notion that political truth could only be revealed to the few who had mastered the proper scientific method, be that the methodical aggregation of happiness and pain, or the esoteric reading of material human history. Either way, political truth reverted to the few.

In quite another direction, there developed under the inspiration of Hume and Kant a form of irrationalism which Spragens calls moral and political "non-cognitivism." Again, the two seem an unlikely pair, but he makes the very good point that Hume's skeptical reading of the human passions and Kant's formulation of the ethical imperative *both* drove moral philosophy out of the temple of ordinary human reason. In this tradition of moral political philosophy men either are filled with non-rational passions, or are empty hypothetical abstractions; rational historical man as we know him disappears from politics.

The self-proclaimed high citadel of contemporary Western lib-

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eralism—the social sciences—is the perfect synthesis of the technocratic and the irrational. It claims on the one hand to reveal rational, value-free truths about the character of social relations, and on the other hand claims that morality itself is not open to such rational knowledge, for there are only many equal, competing "values." The inversion of classical liberalism is now complete: It has become, in Spragens's words, Locke without reason, Hobbes without war, and Madison without public virtue.

To this point Spragens has covered a good deal of historical ground, and, though one may wish to quibble with his reading of this book or that, the overarching narrative is right. However, there is a sense of inevitability built into his history, and this causes severe problems in the final chapters, wherein he attempts to revise the liberal notion of human reason. This inevitability derives from Spragens's implicit metaphor of reason as an acid that, once uncorked by Descartes, would necessarily eat through both the moral and political beliefs which preceded it, as well as the underlying moral and political practices on which they rested. There are no logical alternatives to Descartes or Nietzsche, perfect rationalism or perfect irrationalism; there can only be more or less stable "compromises" between them. Epistemology becomes a balancing act.

This "compromising" is a highly improper application of liberal thinking to philosophy, and muddles the whole conclusion of the book. Spragens gives a cursory account of logical positivism and analytical philosophy as variants of rationalistic liberalism, then turns to contemporary philosophy of science and finds that "instead of consensus we have a quite broad spectrum of viewpoints." (The adoration of consensus is the supreme liberal vice.) Holding up the works of Michael Polanyi, Stephen Toulmin, and, occasionally, Wittgenstein as expressing theories of knowledge needed for a new liberal politics, he confuses and distorts the work of all three. For instance, his assertion that "Drawing the line [between science and metaphysics] is, in part at least, a matter of sound strategic judgment" would be flatly rejected by all the thinkers he admires —indeed by any philosopher worth his salt. These men are not philosophical liberals, yet Spragens makes them sound like *New York Times* editorialists.

This may seem a severe judgment, but the irony of *The Irony of Liberal Reason* is that the author correctly diagnoses the trouble with contemporary liberalism, only to succumb to the very same tendencies. At the end of the book he sketches a "new" theory of knowledge which would somehow reconcile rationality, organicism, contingency, consensus, authority, freedom, and so on. The failure of this misguided enterprise does not necessarily mean that a sound and coherent articulation of liberal reason, especially regarding morals, is impossible. For instance, given Spragens's satisfaction with the American regime, an examination of the view of human

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knowledge implicit in that system seems in order. (Instead, he seems only to consider the *Federalist* a fluke, happily situated equidistant between Descartes and Nietzsche on the time line.) Such an inquiry might answer many of the important questions raised in this book, but would require more far-reaching philosophical reflection than Mr. Spragens exhibits here.

MICHAEL SANDEL displays the necessary depth of focus in *Liberalism and the Limits of Justice*, wherein he writes, "The limits I have in mind are not practical but conceptual." And the liberalism which concerns him is not that of Locke or Mill, but rather the philosophical tradition running from Kant to John Rawls, in which justice acquires absolute priority over all other moral and political virtues. To be more precise, Mr. Sandel hopes to show in his little volume that this stream of liberal thought misconceives justice because it is based on an untenable view of human knowledge.

This task is mainly accomplished indirectly, as the bulk of the book is devoted to a careful reading and criticism of Rawls's *A Theory of Justice*, and largely to Rawls's conception of the "original position."[1] Determining how successfully Sandel undercuts Rawls's detailed argument is beyond the scope of this review; more important, it seems to me, is the *sort* of criticism Sandel makes and its consequences both for contemporary liberal thought and for the way in which academic philosophy approaches politics.

Rawls is worth this detailed attention because of what he shares with Kant and where he departs from him. What they share, clearly, is the belief that we come to understand the nature of justice only by recourse to a moral and political Archimedean point. Since Kant's metaphysics required him to rely on a disembodied, transcendental subject, his moral and political doctrines were of necessity abstract and formal; Rawls contrives the "original position" to retain the claim to universality embodied in Kant's transcendental stance, but at the same time he wants to allow the possibility of deriving *empirical* standards of justice that would be binding. One would think that Rawls cannot hope to have his transcendental cake and eat his empirical one, too; Sandel's novel argument is that there is no cake at all.

The "original position" is a very incoherent notion, Sandel points out, quite apart from its being inconsistent with a substantive view of justice. Just what would it mean to be in a state in which I was unaware of my place in society and in my family, of my talents and abilities, of my desires and opinions? In what sense could I still know myself as me? And in what sense could I be said to dis-

[1] Sandel assumes the reader's familiarity with the main outline of *A Theory of Justice*. For this review, suffice it to say that Rawls believes that the primary principles of justice must be determined in the "original position," a state which places us behind a "veil of ignorance," making us ignorant of our own qualities, desires, talents, and position in society.

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tinguish myself from others (or from the Kantian transcendental subject)? In the "original position" we are men without qualities pondering a material world in which qualities are randomly and capriciously distributed, and in which we have no basis for asserting a conception of the good life. This is a peculiar way in which to establish the inviolability of the individual, since, as Sandel suggests, "it makes the individual inviolable only by making him invisible, and calls into question the dignity and autonomy this liberalism seeks above all to secure." More pointedly, "on Rawls' view, *people have no intrinsic worth.*"

As man recedes in *A Theory of Justice*, "community" becomes more important (especially with regard to determining the justice of the income distribution). Yet what is so strange about Rawls's book is that while it has a very communal sense of justice, it has no communities. His theory allows people to *choose* to join communities, but only after he has defined individuals as living apart from those larger aggregations. What is missing, Sandel writes, is "the possibility that common purposes and ends could . . . define a community in the constitutive sense, a community describing the subject and not just the objects of shared aspirations."

Here Sandel is at the heart of the epistemological confusions inherent in modern philosophical liberalism. By hypothetically ripping political man from the real polis in an attempt to derive absolute, rather than conditional or conventional, standards of justice, Kant and Rawls have denatured both. Man apart from the polis cannot be said to want, have, or know anything, because in isolation he *sees* nothing to want, have, or know. He is a ghost. And this polis cannot make fundamental claims upon any of its ghostly members because it is nothing more than a voluntary association. The seeming impossibility of providing an absolute philosophical foundation for justice not only calls into question its primacy, but undercuts the very notion of an absolute foundation to political knowledge apart from real communities in which real people define themselves, each other, and their common conceptions of the good. We acquire knowledge *within* a political community, and, as Sandel carefully puts it, "what marks such a community is not merely a spirit of benevolence, or the prevalence of community values, or even certain 'shared final ends,' but a common vocabulary of discourse and a background of implicit practices. . . . community describes not just what [individuals] *have* as fellow citizens but also what they *are*, not a relationship they choose (as in a voluntary association) but an attachment they discover. . . ."

This extended examination of Rawls has now paid off, for it becomes apparent just why contemporary liberalism is so confused: It no longer understands political man in political community. This is why liberals such as Ronald Dworkin can argue, on the one hand, that individuals have the right to do as they please as long as they do not harm others, and, on the other, that government

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may operate quite capriciously in many areas—for instance, affirmative action—without violating those rights. What unites those seemingly contradictory positions is a ghostly conception of political man who deserves nothing he has and who chooses his ends for no good reasons, and a conception of community as, in Sandel's words, a republic of strangers. The unreality of contemporary political philosophy is not just a product of academic leisure, it is a reflection of day-to-day political discourse in Western liberal-democratic regimes. Liberalism has become inverted, and has forgotten "the possibility that when politics goes well, we know a good in common that we cannot know alone."

So the "limits of justice" to which Sandel's title refers do not only diminish justice with respect to other political virtues, they also limit our *knowledge* of justice to real polities, and frustrate attempts to assert any firmer foundations. Thus Sandel's philosophic argument is rather consistent with Spragens's historical account of the transformation of liberal reason (the main difference being Sandel's ability to articulate a more coherent view of the locus of political knowledge).

Yet Sandel's complete view of political knowledge is not spelled out fully in this small volume, and is defined mainly in opposition to Rawls and the Kantian tradition. The invocation of "community," for instance, can mean many things. No one is against community, especially professors, who treat it with all the sanctity of the Sacred Mysteries of the Roman Catholic Church. Does Sandel mean the same thing that students of Leo Strauss do when they discuss the "regime," or that Michael Oakeshott does when he writes of "tradition"? It is impossible to tell here, and one looks forward in anticipation to Sandel developing a fuller account of liberalism, or his preferred variant, given the understanding that political philosophy must of necessity be derived from real, shared political life.

One looks forward as well to reading the critical reaction to this book. It is easy to imagine reviewers lumping it together with inferior books whose authors, in denying the very possibility of real political knowledge, turn from political philosophy to more nihilistic pursuits. The *real* consequence of Sandel's argument, I think, is quite the opposite. If it is true that knowledge of ourselves and our political world begins within political communities, to understand human knowledge we must first understand the polity. So perhaps it is the philosophical relativist, the post-structuralist historian, and the deconstructionist critic who should be looking to political philosophy, and not the other way around! It will be in understanding the nature of political life that we will be able to account for the nature of our knowledge in general; at that point political and epistemological inquiry become indistinguishable. So if the contemporary philosophic dissatisfaction with liberalism is to have any important consequence, it will be to reassert this fundamental lesson

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of the *Republic*: that at the heart of all philosophy is political philosophy.

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Eric Voegelin's Vision

ROBERT NISBET

***Dante Germino:* Political Philosophy and the Open Society.** *Louisiana State University Press. 190 pp. $18.50.*

***Ellis Sandoz, ed.:* Eric Voegelin's Thought: A Critical Appraisal.** *Duke University Press. 208 pp. $24.75.*

***Ellis Sandoz:* The Voegelinian Revolution: A Biographical Introduction.** *Louisiana State University Press. 271 pp. $19.95.*

***Eugene Webb:* Eric Voegelin: Philosopher of History.** *University of Washington Press. 320 pp. $20.00.*

Ever since his book, *The New Science of Politics*, was published in 1952, Eric Voegelin's reputation has been located among those thinkers we are prone to call "well known" but not "known well." A formidable combination of scholarship and prophetic passion has a good deal to do with this condition, though it would be negligent to overlook the interdiction under which the reigning idols of behaviorism and scientism in American thought during the past half century have placed ideas and perspectives like Voegelin's. Despite the secular inqu.sition to which this extraordinarily rich philosopher has been subjected, Voegelin has not wanted for students and followers, and on the evidence of the four volumes listed above, these students and followers include some minds of analytic power and interpretative acumen. In their respective ways they should do a good deal to accelerate what one of them refers to as "the Voegelinian revolution." There is little if any scent of hagiography in them, for which both Voegelin and the reader may be grateful. Where lacunae, contradictions, and obscurities exist in Voegelin's writings, they are seized upon by the authors and contributors to these volumes. But one and all they are animated by the laudable desire to bring to a wider public the remarkable philosophical, scholarly, and prophetic achievements of their teacher.

Eric Voegelin was born in Cologne, Germany in 1901. He attended the University of Vienna where he earned his doctorate in law, chiefly under Hans Kelsen (with whose theories Voegelin would ultimately break) and Othmar Spann. The Vienna of the early part of this century was a veritable Olympus in its scholarly

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and scientific minds, and Voegelin also worked with or under such luminaries as Mises, Hayek, Haberler, Morgenstern, Machlup, Felix Kaufmann, Alfred Schutz, and Fritz Schreier, in many cases forming lifelong friendships. Early on the writings of Max Weber exercised significant force in Voegelin's thinking.

Voegelin spent the years 1924-26 in the United States on a Rockefeller fellowship, during which time he acquired a profound affection for the country and its people, and a strong admiration for much of American philosophy, with William James leading the ranks of those Voegelin found most rewarding. When Voegelin returned to Vienna, he would write as his first book a respectful but discerning disquisition on the American mind, which was very much a *Jugendwerk*, but which revealed a versatile and disciplined mind. But before returning to his university, Voegelin received yet a third year under his Rockefeller fellowship, which he chose to spend in part at Oxford and in part at the Sorbonne. He was thus very much the cosmopolite in his learning when he got back to Vienna, where he was immediately elected a member of the faculty, a status that would last until Nazism made his work impossible.

He was one of the many creative minds (non-Jewish, in this case) to be driven to American shores by the rise of Nazism. His first appointment, a temporary one at Harvard, was made possible by his friends and admirers, Joseph Schumpeter, Gottfried von Haberler, and William Y. Elliott. He later turned down an offer from Bennington College in favor of one from the University of Alabama, declaring in later years that the reason for his choice was that the atmosphere in the southern universities was predictably less Marxist. From Alabama he went to Louisiana State University where he joined such notables as Robert Penn Warren, Cleanth Brooks, and Robert Heilman. He taught and wrote there for close to two decades, leaving Louisiana only when he received a handsome offer from the University of Munich in 1958. Today, at age 81, he continues his research and writing in Stanford, California.

WITHOUT doubt Voegelin's best-known work is his magisterial philosophy of Western history, *Order and History*. How many readers have made their way page by page through the four volumes of this work—*Israel and Revelation*, *The World of the Polis*, *Plato and Aristotle*, and *The Ecumenic Age*—written over a twenty-year period, I cannot even guess. Not many, surely, for these volumes are tough going even for scholars, due to their often arcane learning, and the dense detail of argument; the very cast of Voegelin's extraordinary mind, so alien in texture and content to those of the reigning idols of Western twentieth-century thought, poses additional difficulties. But books can be relatively little read and still exert power simply as cultural events. Not many people have read the entirety of Spengler and Toynbee, or, even more strikingly, of Darwin, Marx, and Freud; but the impact on Western culture of their respective works can be doubted by no one. Voegelin has

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not, or has not yet, matched the cultural force of these, but Ellis Sandoz has every right, I believe, to refer to "the Voegelinian revolution." There is by now a solid and imposing core of scholars (and others) teaching and writing in America under the Voegelinian standard, and given the dismal collapse of the behaviorism and scientism that ravaged the intellectual landscape for decades—not to forget the defensive position in which liberalism has been placed in recent years—it is only fair to surmise that Voegelin's name will acquire ever-greater luster in the years ahead.

I shall say more about Voegelin's *magnum opus* shortly, but first something must be said about the writings which, first in Austria and then the United States, preceded *Order and History*. Among the most important of these are his studies of racism and the malevolent hold it has exercised on the modern Western mind, and his anatomy of power and its difference from authority. His *Race and State* and *The Race Idea in Intellectual History* were both published in Germany in 1933, a fateful year in all respects, but overwhelmingly so with respect to the unprecedented flowering of all dark and evil strains of race-hatred in the European, and especially the German, mind. The two works are founded upon the author's moral repugnance for racism in any form, but they take on their largest importance in his detailed and far-ranging efforts to account for it, to provide an historical *raison d'être*. With racism, as with totalitarian despotism, we are permitted repugnance and hatred as starters, but we must then find out why, among seemingly normal beings, the rage for these movements can find so many supporters, consume so many minds. Voegelin's treatment of race in European consciousness, from early times down to and including Nazi doctrine, is as objective and searching as any I have read. Race-regard has been a constant in history, an inevitable constant given the vast multiplicity of peoples and their respective gods, idols, and folkways. Voegelin's conclusion is that what has chiefly occurred in modern times, commencing with the Reformation and then the Enlightenment, is the decay and corruption of the concept of race.

Given the ascendance of Nazi racial doctrines in Austria and Germany in the 1920s, and given the unambiguous hostility of Voegelin toward Nazi fulminations on the subject, some measure of courage was required to publish these two books in 1933, and yet a different kind of courage to pursue his quarry calmly and objectively in each volume. There is no polemical quality evident, but in no work on racism with which I am acquainted is there a more deadly refutation of its biological and anthropological claims. Sandoz offers the following quotation, one that, in 1933 assuredly, sets Voegelin's own analysis far apart from conventional refutations of racist dogma. "What links race theory, which is rooted in this time period, with liberalism and Marxism, is the will to make the state ahistorical (*geshichtslos*), to deliver it to the masses, to destroy the

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substance of history, and to destroy primordial man in his capacity to generate society." What gives racism its peculiar power in our time, Voegelin continues, is its power to corrupt the idea of equality by giving equality to all of a certain alleged racial strain, equality also to all those who submerge themselves in ideologically created masses of the left or right. Voegelin saw that the Augustinian theme of the historical struggle between good and evil had been converted by anti-Semites into an apocalyptic struggle between the Aryan or Nordic race on the one hand, and the Jews on the other.

Voegelin's developing interest in the novel kind of power found in Nazism and Marxism was expressed in *The Authoritarian State* in 1936. Its immediate context was the "authoritarian" constitution of 1934 in Austria; the whole second half of the book deals with this constitution and the challenges to it from both the Marxist socialists and the Nazis in Austria. From our point of view today, though, the book may be seen as among those which began to proliferate in Europe from the late 1920s on—best signalized, perhaps, by Ortega y Gasset's *Revolt of the Masses*, first published in 1929—in which a sharp distinction is made between historic-traditionalist states rooted in kinship, religion, and social class, and the new types of absolutism represented by Leninist and Stalinist Russia, Fascist Italy, and Nazism. The hallmark of the new type of absolute power was its rejection, its extermination whenever possible, of all competing authorities: kinship, religion, economics, or whatever. As Voegelin saw, this new political power could be made to seem liberating, fulfilling, and redemptive by its spokesmen, when in fact it was consecrated to the destruction of all that stood in the way of the "people," the "workers," the "Aryans," or the "general interest" as certified by ideological and military elites.

Given the book's harsh indictments of Nazism, it was to be expected that it would be banned immediately when the Nazis took over Austria in 1938. Recognizing the utter hopelessness of remaining faithful to his scholarly pursuits in the atmosphere of Nazism, Voegelin left later that year for the United States; first, though, he completed *The Political Religions*, published in April of that year, then reprinted the following year in Stockholm after the Nazis suppressed it in Austria as it was coming off the press. In many respects this volume is Voegelin's most thorough and devastating treatment of Nazism and Fascism, and all other ideologies in which politics becomes transfigured by the essentially religious forces of enthusiasm, ecstasy, and mysticism. It also anticipated the themes of *The New Science of Politics* (1952), the book for which he became most famous in America.

Apart from *Order and History*, *The New Science of Politics* is very likely to be Voegelin's most widely known work. If only because of its bold and ironic title, it was almost certain to catch on quickly. There is no appeal whatever to either science or to the new and modern. As Voegelin himself has said, its true title would

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be "Truth and Representation." Gregor Sebba, one of Voegelin's oldest friends and admirers, writes: "As a science it is that *epistéme theoretiké* which Aristotle also called *philosophia* and which Voegelin defines as 'a truthful account of the structure of reality,' not new but renewed by taking into account what has become known since the Greeks." What was in truth "new" and, if we like, "scientific" in the book was its profound demonstration of the unreality and invalidity of all theories of politics which forsake true theory for method, which are tethered to behaviorist and positivist stakes, which lose genuine science in their scientism, and, most important, which neglect the historical dimension. "The existence of man in political society is historical existence, and a theory of politics, if it penetrates to principles, must at the same time be a theory of history. . . . To pursue a theoretical problem to the point where the principles of politics meet with the principles of philosophy of history is not customary today. Nevertheless, the procedure cannot be considered an innovation in political science; it will rather appear as a restoration, if it be remembered that the two fields which today are cultivated separately were inseparably united when political science was founded by Plato." Such declarations make *The New Science of Politics* not only an onslaught against reigning creeds of scientism and an affirmation of classical principles for the true study of man, but also a precursor, prolegomenon, to Voegelin's four-volume philosophy of history, *Order and History.*

In another respect, this small volume is important in its invocation of "gnosticism" as the abiding disease of the Western world. In the strict sense, gnosticism refers to certain Hellenistic and early Christian ideas found in a variety of cults and sects that promised, among other things, a special salvation for those who would avail themselves of an occult "knowledge" instead of relying upon mere faith in God and heaven. By the second century, gnosticism posed a formidable challenge to what was becoming the official Christian church, and a great deal of the writing of the early church fathers went toward formulation of the true precepts of Christ in opposition to what were regarded as gnostic (and also Manichean) debasements and corruptions of Christ's word. What in time became central in gnosticism—a persistent underground, so to speak, in the history of Christianity—was its insistence upon the evil beings and institutions that rule the world and who will be defeated only through a struggle based upon a special form of knowledge available only to the elect.

Commencing in his *New Science*, Voegelin saw gnosticism as a far greater and more insidious force in Western history than is suggested by a merely literal definition. It is gnosticism, he tells us, that underlies those frequent outcroppings of millenarianism and eschatologies turned earthward and made secular. It is the several modern manifestations of gnosticism in this sense—Marxism, Nazism, and others—which have interested Voegelin the most, for in his

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perspective gnosticism is the spiritual dynamic of all forms of contemporary totalitarianism. But gnosticism as a developing, expanding disease of the Western mind has many other manifestations, among them egalitarian democracy with its redistributionist passions, the worship of subjectivism, utilitarianism, and scientism. For Voegelin, Marxism is the supreme manifestation of gnosticism in the modern world. Eugene Webb writes: "Because the *gnosis* of the gnostic visionary is special information possessed by only the few, not the universal tension of existence or love of God in which all are involved whether they realize it or not, gnostic movements tend to divide mankind into an elite (the knowers and masters of the technique) and the masses, the nonknowers, who at best can be followers of those who know." The use of force, in however large measure, is inevitably sanctified by gnostics when it can be seen as the *via sacra* for the attainment of perfection. The only cure for a gnostic contemplation of man and universe, Voegelin tells us, is "to drop gnosis and return to the original sources of order in the soul, *that is to experiences of faith.*"

The idea of gnosticism as a pandemic disease of the West plays a large role in Voegelin's philosophy of history, but it is nevertheless ancillary to the larger purpose of *Order and History*. The opening sentence of the first volume gives us a clue to this purpose: "The order of history emerges from the history of order." In the same volume Voegelin writes: "history creates mankind as the community of men who, through the ages, approach the true order of being that has its origin in God. It is an intricate dialectical process whose beginnings . . . reach deep into the cosmological civilizations —and even deeper into a human past beyond the scope of the present work."

It was Israel, Voegelin writes, that supplied the vital context of man's first "leap in being" through which man became conscious of himself as member of a God-created community of man. It was in Israel that man first came to see himself as inalienably a part of history, a product and an embodiment of history. "Without Israel there would be no history, but only the eternal recurrence of societies in cosmological form." Needless to say, Voegelin utterly repudiates Toynbee's effort to place Israel and Jews among the "fossilized" peoples important only in the light of what proceeded from them in antiquity. For Voegelin, Israel has been an abiding, ever-creative and indispensable part of Western history.

From Israel Voegelin takes us to the Greek polis and to the mighty works of Plato and Aristotle. What Moses was in Judaic history—that is, shaper and exemplar of a history—Homer was for the Greeks. In effect, Homer created the past that was so vital to the life of the Hellenic mind. From the Greeks came philosophy, as revelation had come from the Jews; each is vital to the realization of "leap in being." As Sandoz writes, "the symbolic form of philosophy is not the narrative of paradigmatic history as in the Old Testament from Genesis to Second Kings, but the Platonic dialogue

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with its unique perfection of the *myth* as the articulating symbol of the philosopher's leap in being."

In Voegelin's perspective, the gnawing, ineradicable sense of disorder in ancient Hellas was utterly vital to the emergence of physical and moral philosophy—and also, for that matter, to the drama, poetry, and art of the age. It is the dawning sense of disintegration, of estrangement from mores, and of pandemic flux, that germinates the "rage to order" which is so vivid a current in Western philosophy. Israel supplied man with the necessary sense of being in, of belonging to, history; Greece, and most heroically Plato and Aristotle, added to Judaic revelation the passion to understand, to know, and to comprehend the torments of disorder on the one hand, and the bases of order on the other—order in soul, state, and cosmos. I do not know inquiries into the Greek mind more searching and imaginative than those found in the second and third volumes of *Order and History.*

The fourth volume, *The Ecumenic Age*, is the most difficult, and the reader must be prepared to suspend the ordinary unities of time and place in the reading of the book. It covers a great deal; seventeen years were required for its composition. To a considerable degree this volume is a reexamination of some constitutive themes of the first three, and Voegelin has not hesitated to contradict himself, or change his mind in a number of respects. The title refers to the rise of early "ecumenic ages" in the form of the ancient empires which, due to their relative vastness, their godlike rulers, and the inevitable corrosion of smaller ethnic identities under the impress of imperial rule, gave the world its first sense of an extra-tribal unity. But the title also stands for a specific historical duration, that beginning with the rise of the Persian Empire in the sixth century B.C. and concluding with the fall of the Roman Empire in the fifth century. And, finally, the title stands for the varied cultural and intellectual reactions to the ecumenical idea. St. Augustine is only the most powerful and influential thinker to be seized very early by the ecumenical vision. Throughout this rich and fascinating volume, the present—the "sacred present," as Whitehead called it—is either in foreground or background. That, it should be said, holds true for all four volumes of *Order and History.*

VOEGELIN'S presentation of Western history has something in common with recent explanations of the "punctuational" character of the evolutionary process in physical and biological nature. Something of a revolt is taking place against the orthodox Darwinian insistence upon gradualness and continuity. Precisely that kind of insistence is to be found in nearly all of the philosophies of history of the eighteenth and nineteenth century—Marx's included. (See, for example, the Preface to volume one of *Capital* in which Marx trumpets his repudiation of "bold leaps" in history, and also his insistence that revolutions are really nothing more than final links in continuous, gradual, and slow-moving chains of variation and

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change. Not idly did Marx compare his *Capital* to Darwin's *Origin of Species*!)

One of the surpassing virtues of Voegelin's approach to history is his ample recognition of the role of the discontinuous, the eruptive, the sudden, and the mutational, along with the often long periods of inanition and desuetude which lie between such "leaps in being" or "outbursts." From the time Voegelin read William James's *Principles of Psychology* during his fellowship-stay in America in the middle 1920s, he remained almost obsessed by James's famous treatment of consciousness. In one way or other, he may be said to have worked and reworked James's and his own ideas of consciousness into all of his important works, not least in *Order and History*. There is the still unknown, unexplored "consciousness" by which world and man were brought into being; that we have reason to believe is, or was, eruptive in character. But there is also the eruptive nature of individual consciousness when it is afforded a fertile context. Voegelin has done more than any other philosopher with whom I am acquainted—with the exception of St. Augustine—to bring an empirical, reasoned conception of individual consciousness as the dynamo of history.

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The Habermas Phenomenon

MARK BLITZ

Thomas McCarthy, ed.: **The Critical Theory of Jurgen Habermas.** *MIT Press. 484 pp. $12.50.*

John B. Thompson and David Held, eds.: **Habermas—Critical Debates.** *MIT Press. 336 pp. $30.00 cloth; $12.50 paper.*

JURGEN HABERMAS is the "dominant figure on the intellectual scene in Germany today," Thomas McCarthy tells us, and this is arguably so. His American and British influence is now limited to a small constituency of sociologists and philosophers with left-wing and sometimes radical politics. But his influence will grow, both because his work is serious, if flawed, and because it satisfies an important yearning in the contemporary academy.

During the 1960s, young American academics studied in an atmosphere in which the legitimacy of representative democracy was questioned continuously and pervasively, and after a while matter-of-factly: An impressive but unmistakable radicalism became the prevailing orthodoxy. This atmosphere affected everyone. For

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some, it allowed old-fashioned economic Marxism once more to become respectable. For others, it allowed entree for a "humanistic" version of Marxism. For most, however, the new orthodoxy resulted in the unfocused but manifestly left-leaning vision that still animates younger scholars, a vision of a community more open, equal, humane, and spiritual, less imperialistic, privileged, competitive, and materialistic than our own. The politics that results from this "ideal" differs from the usual academic liberalism of the 1950s and 1960s precisely because it arises from habitually questioning the very legitimacy of democratic capitalism, as distinct from criticizing some of its aspects.

Today's young academics, leftish or avowedly Marxist, clearly enjoy the freedom and relative security of their academic positions. But most became and remain academics, not because they seek refuge or love idleness, but because science and scholarship were what smart young men in the 1960s were supposed to pursue. This love of science, in fact, led many to support behavioral approaches in sociology, political studies, linguistics, and anthropology, and analytic approaches in philosophy. It is wrong to think that deep doubts about the American way of life were held only by the largely non-behaviorist professors in the "Caucus for a New Political Science," or by humanistic psychologists, "continental" philosophers, and "Marxist" economists. Especially among young scholars, devotion to hard, "powerful," and rigorous techniques for studying society often went hand in hand with serious questions about the American regime.

This devotion to hard science, however, was and is attacked by "humanistic" and radical scholars who dismiss the new social scientific, behavioral, and analytic methods. Social and behavioral science, because of its separation of "facts" from "values," is seen to be inherently conservative, or dehumanizing and technocratic, or irrelevant to the real issues. It distorts our understanding of politics and political change; it crowds out more fruitful approaches; and by clinging to a belief in the impossibility of validating "values" it leaves political beliefs unanchored.

Young leftist academics of a behaviorist persuasion cannot meet these attacks gracefully. The easier criticisms give birth to various research programs—studying multinational corporations, political participation, and elections with an eye toward uncovering important facts about equality and inequality—but these programs do not yield powerful theoretical results. And the deeper criticisms of the central political positions go unanswered.

Surely what one desires in such a situation is an approach to politics that is at once sophisticated about contemporary analytic developments, attentive to the issues and approaches considered by the Marxist tradition without being strictly Marxist, oriented to broad, powerful, theoretical judgments, and optimistic about validating the legitimacy of certain moral statements. On the whole, this is Jürgen Habermas's program, which is why his in-

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fluence is likely to increase. For many, he promises to satisfy both their political and social-scientific requirements.

HABERMAS began his academic career as the self-conscious heir to the Frankfurt School tradition of critical theory. The school flourished in Germany in the early 1930s and its members produced several controversial works as emigres after the war. Most Americans know the school best through Herbert Marcuse's books and Theodor Adorno's work on the authoritarian personality. Marcuse's *One-Dimensional Man* rehearses most of the themes that occupied the school, and Adorno's and Max Horkheimer's *Dialectic of Enlightenment* is the school's most powerful general statement.

Frankfurt School thinkers attempted to understand contemporary society within an overall logic of historical development. The key to the analysis of the present, however, is less what we know about the past than what we can say about the future. But what the future will be depends to a greater or lesser degree on practical decisions: It is not inevitably determined. Moreover, the practical choices that shape the future are themselves conditioned by the way in which the present is understood. The goal of Frankfurt School thinkers is to produce a "critical theory" that is properly attentive to these complex connections between future and present, and theory and practice.

It is possible to attempt to construct a developmental and politically relevant theory of this sort without sharing the Frankfurt School's political views. But their own inspiration for critical theory is Marx. The Frankfurt School's analyses therefore emphasize concepts such as "crisis" and "contradiction," and seek to properly situate and analyze contemporary, "advanced" capitalism. The substance of their work depends heavily on Marx's critique of political economy, and on assimilating the discussions in Marx's early writings to the main body of his thought. But Frankfurt School thinkers also attempt to assess the political implications of the development of technology and bureaucracy, and of Freud's discoveries. They therefore reject the simple economic determinism it is easy to find in Marx, and struggle to express coherently an understanding of politics that saves the Marxist critique of capitalism without treating politics as a matter for technological or scientific manipulation.

Habermas retains the Frankfurt School's wish to make theoretical concepts relevant to political practice, its belief in the importance of Marx's critique of political economy, its understanding that vulgar economic determinism is incorrect, and its focus on developments after Marx. But he goes beyond the school in several respects. These are evident in all of his works, but they are especially apparent in *Legitimation Problems*, *Communication and the Evolution of Society*, and in his reply to his critics in *Habermas—Critical Debates*.

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First, Habermas develops more systematically than do Frankfurt School thinkers the attempt to distinguish between technical rationality and practical speech and action. He distinguishes between "instrumental" actions that attempt to achieve individual success (primarily by following technical rules), and "communicative" actions that are oriented toward achieving understanding. Attempting to achieve cooperative social agreement through mutual understanding is especially to be distinguished from the form of instrumental action Habermas calls "strategic" action. Strategic action is aimed at achieving one's own success by influencing others' decisions. The influence is "instrumental" not only because it aims at individual success but also because it achieves its success by "following rules of rational choice." Habermas's point in all this is to distinguish the use of reason as a utilitarian calculus, one that allows us technical mastery of nature and selfish mastery of others, from a use of reason that attempts to achieve social cooperation by bringing about enlightened mutual agreement. Habermas ultimately intends to oppose a notion of politics and society based on such "communicative" action to a notion of politics intentionally —or unintentionally, as with Marx—based on a concept of instrumental action.

Second, Habermas is concerned about the difficulty Frankfurt School thinkers have in properly justifying their political positions. What are the grounds on which we can validate the worth of the future social arrangements they desire? Habermas believes that it is possible to defend a reworked version of Kant's attempt to ascertain the conditions making morality possible. In Habermas's view, the central political philosophical question—what is the best form of government?—can be at least partially answered by ascertaining the system of legitimate rules consistent with the universal competence that we all have as speakers trying to reach mutual understanding.

Third, Habermas's discussion of historical development differs from that of both Marx and the Frankfurt School because Habermas draws upon Jean Piaget's and Lawrence Kohlberg's studies of individual psychological and moral development, and Noam Chomsky's studies of linguistic development. Indeed, his chief clue for studying historical evolution is to compare it to the manner in which individuals become morally, cognitively, and linguistically competent.

This reliance on Piaget and Chomsky makes clear a fourth major characteristic, namely, Habermas's eclecticism. In contrast to the members of the Frankfurt School, he is much more willing to take seriously approaches to the study of society that are quite diffent from his own. He is not afraid to confront many other major academic figures and to weave their strengths into his own design. He considers at length Talcott Parsons's action theory, Niklas Luhmann's systems theory, Hans-Georg Gadamer's version of Heidegger, and the work of the American pragmatists; he also takes con-

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temporary analytic philosophy quite seriously. Much of his own discussion of "communicative competence" is developed through considering their works with a theoretical eye toward his own notion of "rational reconstruction," and a practical eye toward the problem of grounding, validating, and legitimating moral judgments and political orders.

The two books under review can help to fill in this outline of Habermas's work, but they neither substitute for nor are comprehensible without considering Habermas's own writings. McCarthy's book is the chief work on Habermas in English. It is quite comprehensive—indeed, it suffers from being too long and repetitious. Yet for all its length, it is basically a report of Habermas's positions and programs with some criticisms and short essays on theoretical topics added on; it does not really dig in anywhere. One could say the same of Habermas's own work, which is largely a series of outlines for research programs not yet completed, but Habermas's analytical intelligence is manifest even in these outlines. Still, McCarthy's work is good and Habermas himself treats it with respect. No one who considers Habermas seriously will ignore it. *Critical Debates*, on the other hand, is distinguished chiefly by Habermas's own reply. Several of the individual essays are stimulating, but the book as a whole is narrow—almost all the authors have too much in common with Habermas. Their criticisms force him to clarify his views, but none challenges him profoundly.

WHAT, then, would be deeper grounds on which to criticize Habermas? One possibility is to examine the moral and political implications of the notion of "communicative competence" that is now at the core of Habermas's thought.

Men who attempt to achieve mutual understanding, rather than domination over others, can succeed in this attempt only because speech is comprehensible. The characteristics that enable us to communicate comprehensibly for this purpose comprise our "communicative competence." The chief characteristic is our ability to talk in a manner that "conforms to recognized norms." Otherwise, Habermas asserts, we could not even begin to share "value orientations." When we attempt to reach understanding with others, we say what we believe to be correct. But we also implicitly offer to display the normative context that justifies our statement if it is challenged, and we also implicitly offer to discuss the validity and norm itself if it is challenged.

These statements and norms are to be explicitly defended within an overall attempt to achieve mutual understanding. When we recognize this, Habermas says, further conditions of communication come to light. The chief one is that genuine rational consensus can be achieved only if each person involved in the discussion has an equal chance to assume any of the "dialogic roles" within the discussion. This rarely occurs in fact, but it is nonetheless cen-

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tral to our understanding of what rational argument means when oriented to mutual understanding.

Now, this notion of equality is itself normatively charged. It means that the root ability that allows us to treat each other in non-manipulative ways is based on our being able to take any place in a given discussion and still reach agreement. (The connection of Habermas's argument to Kant's morality or to John Rawls's "original position" will be apparent to anyone familiar with those thinkers.)

This moral implication is decisively connected to politics because the issue of the validity of norms is related to the issue of political legitimacy. When people agree on something it produces a "legitimate interpersonal relation" between them. I act because we mutually agree, not because I am being used or am using you. Ultimately, however, legitimate relations depend upon the validity of the entire normative context, or, more practically, the political order. The legitimacy of the political order is the broader context for the legitimacy of any particular relation, and Habermas argues in *Communication and the Evolution of Society* that claims to legitimacy can themselves be contested: "Legitimacy means that there are good arguments for a political order's claim to be recognized as right and just. . . . This definition highlights the fact that legitimacy is a contestable validity claim."

Difficulties in *legitimating* particular actions and situations within contemporary capitalism are at the heart of the problems with contemporary capitalism, Habermas argues. These problems are ultimately based on advanced capitalism's need to resort to various forms of illegitimate domination because it cannot be based fully on equal conditions of argument and discussion. If "the state does not succeed in keeping the dysfunctional side effects of the capitalist economic process within bounds acceptable to the voting public . . . then manifestations of delegitimation are unavoidable."

Habermas does not intend to suggest that all concrete issues of value could be solved by fully elaborating the formal conditions that allow us to reach mutual understanding through speech. These conditions do imply that individuals can reach an uncoerced understanding with others and within themselves only "in the structures of undamaged intersubjectivity." But communicative reason "cannot judge the value of competing forms of life." It gives us "formal determinations," but "does not extend to the concrete shape of an exemplary life-form" because "actual forms of life are embedded in unique traditions." Nonetheless, the formal determinations do have substantive meaning, and it is not surprising to discover what Habermas claims this meaning is: "The 'pursuit of happiness' might one day mean something different [from what it means now]—for example, not accumulating material objects of which one disposes privately, but bringing about social relations in which mutuality predominates and satisfaction does not mean the triumph of one over the repressed needs of the other." It is

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here that we find the rather vague political vision that animates so many younger academics.

HABERMAS'S goal is to work out these notions in detail and to connect them concretely to his discussion of historical development. But we can already question Habermas's thought in general by sketching the weaknesses of this admittedly incomplete political-philosophical argument.

Politically, the chief difficulty is that Habermas is utopian: He does not come to grips with the fact that political communities are inherently imperfect. No "domination" could ever be simply legitimate because the things with which political communities deal—authority, property, opportunity—could never be distributed with perfect justice. Yet it is still possible to make clear the grounds on which to judge the *relative* validity of forms of government, and that basis to weigh the *relative* "legitimacy" of particular situations. The necessary imperfection of any political order, combined with the possibility of judging this imperfection, allows a critical perspective that captures what Habermas's analysis of capitalism can capture, but without becoming immoderate or utopian.

Furthermore, Habermas does not realize how little "moral agreement" is related to political goods as they are actually sought and enjoyed by citizens. He does not explore how much the perspective he adopts distorts in an egalitarian direction the experience of courage, statesmanship, pride, and other political virtues. Consequently, although Habermas seeks to save political practice from inappropriate reduction to technical speech, he does not do justice to the notion of practical reason that expresses, and helps bring about, those public virtues that constitute good character. By ignoring character he also fails to consider seriously the traditional alternatives to the stories of intellectual and moral development told by Piaget and Kohlberg. Finally, by dismissing substantive notions of forms and adopting formal ones, Habermas accepts too uncritically the importance of history and tradition in shaping "world views." These become central rather than accidental sources of the "good life" only when the *natural* sources are prematurely dismissed.

Philosophically, the chief difficulty with Habermas's notion of universal competence is that it leaves unconsidered the variety of ways in which there can be common characteristics that all human beings share. He remains too much under the sway of the belief that true statements about our common ability to understand "normative" actions and speech must cover us all equally. But what if we can all be moral only in the manner in which, say, members of an orchestra all belong to it—precisely by not being able to assume equal roles? One need not claim that this is a more fruitful approach to understanding "universal" abilities in order to see that he takes too much for granted here.

Finally, from a scholarly standpoint, these political and philo-

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sophical shortcomings are rooted in Habermas's too ready acceptance of a modified Kantian perspective: He too easily dismisses as implausible what he calls the "metaphysical mode of thought" and "normative concepts of the good" that he sees in ancient authors and contemporary "neo-Aristotelianism." The result is that the circle in which he considers the possibilities and limits of human speech, and the relation of truth to the distribution of political goods, is much too narrow.

Having said all this, it is important to conclude by emphasizing that Habermas's writings will continue to receive attention. He is a serious thinker who overcomes, or at least probes more deeply, many of the problems with the Frankfurt School. And his combination of genuine regard for rigorous analyses, wide-ranging and eclectic interests in the social sciences, and an ability to make vital at least some version of Marx's theoretical concerns and practical interests, all suit the political and intellectual needs of many of today's teachers and writers.

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Economics and the "Big Picture"

NICK EBERSTADT

***Mancur Olson:* The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities.** *Yale University Press. 284 pp. $14.95.*

THE economics profession is in an unusual position these days, for it is one academic industry in which rapid growth has led simultaneously to improved "competitive advantage" and greater "diseconomies of scale." Thanks in part to its early mastery of the data processing revolution and the statistics explosion, economic literature has assumed a technical sophistication and a formal rigor which have made it the envy of—and increasingly, the model for—all other social sciences. But there has been a price to pay for harnessing the tremendous power of the information age. As econometric methodology grows more intricate, as the demand for pure and applied economic research continues to climb, and as the growing supply of economists position themselves to be on the forefront of their particular sub-discipline, the costs rise for any individual economist attempting to maintain a watch over any broad stretch of the social horizon. Being by and large rational and risk-averse creatures, economists have as a result increasingly shied away from the basic, and still largely unanswered, questions which stimulated the study of economics in the first place: the origins of wealth; the causes of poverty; the ways in which government policies and voluntary commercial associations transform societies and the people who live in them.

This is not an incidental dilemma. To fulfill its charge, economics must attempt to come to terms with these big and difficult issues. A discipline that claims to offer insight into patterns of production, growth, and distribution for diverse nations can hardly presume to do much less. Thus, under the weight of its own peculiar embarrassment of riches, economics has been evolving into a field of study in which the whole is significantly smaller than

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the sum of the parts. The modern economist may be more confident than ever before in manipulating mathematical models and in analyzing the behavior of small units within economies, but he is more hesitant in—and very possibly less adept at—addressing the bigger questions which preoccupied his predecessors.

APPEARING when it does, Mancur Olson's *The Rise and Decline Of Nations* will be seen by many readers as a daring attempt to help redress this imbalance of attention. As the title suggests, the book is sweeping and ambitious. Although it is a short volume, Olson leaves no continent and almost no period of recorded history untouched. While explicitly eschewing "universalist" or "monocausal" interpretations of economic change, he presents a theory that, he argues, has relevance to the development of almost every known society. By Olson's own evaluation, this theory explains or is consistent with:

> the rapid postwar growth of West Germany and Japan, with the slow growth and ungovernability of Britain in recent times, and [with] Britain's record as the most rapidly growing country in an earlier time . . . [with] the slower growth of the northeastern and older midwestern regions of the United States and with the faster growth of the South and West . . . with the rapid growth of the six nations that founded the Common Market, the rapid growth of the United States throughout the nineteenth century, and the rapid growth of Germany and Japan in the later part of the nineteenth and the early twentieth centuries . . . [with] the growth of Britain and Holland [during] the early modern period and their roles in the rise of the once-backward civilization of Western Christendom . . . [with] the decline of old cities in the midst of these expanding countries . . . with the phenomenal postwar growth of Korea, Taiwan, Hong Kong, and Singapore and with the guilt-ridden stagnation of the China that was first exposed to European pressure, not to mention the similar stagnation of India . . . [with] the pattern of inequalities and the trade policies of many of the unstable developing countries, and a number of other facts as well.

Olson's theory does not rely upon cultural values, national passions, technological innovation, or variations in the response to challenge to account for these momentous events and historic phenomena. His model is a careful elaboration of certain accepted precepts in microeconomic theory, which Olson himself helped refine in his influential treatise, *The Logic of Collective Action.* The centerpiece of this model is market imperfections and the distortions they cause in an economy. In Olson's exposition, the two principal obstacles preventing societies from pricing and allocating their resources so as to maximize prosperity and well-being are "public goods" and "distributional coalitions." The former are commodities and services which cannot easily be denied to citizens who do not pay for them: clean air or safe streets, for ex-

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ample. The latter, to judge by Olson's usage, seem to be what non-economists call special interest groups: They come in all variety of sizes, and attempt with varying degrees of success to organize the behavior of their members with inducements and penalties, but their goal is always to maintain or expand their share of the social pie. Olson demonstrates that individuals and social groups will often find it in their immediate material interest to pursue objectives which increase inefficiency and inequality in their own community, in their country, or in the world. On the basis of this exercise in logic, Olson contends that rapid economic growth is most likely in societies where distributional coalitions are weak and where decisions about public goods cause less acrimony: for example, frontier America, or devastated post-war Japan. Conversely, he predicts that stagnation and relative economic decline are most likely to afflict societies in which distributional coalitions are pervasive and entrenched: Here he would cite modern Britain and Hindu India.

As an abstract construction, Olson's theory cannot be faulted: It is internally consistent, and can be verified through a few simple equations. As a system of propositions about optimal strategies for rational ("utility-maximizing") individuals in a static environment, it is useful, even thought-provoking. However, as a tool for explaining the great changes in fortunes and behavior of peoples and societies throughout history it is seriously deficient. Like so many other economists today, Olson has an excellent understanding of the habits of *Homo economicus*, the rational risk-averse, utility-conscious being who inhabits blackboards and textbooks. Unfortunately, *Homo economicus* bears an imperfect resemblance to his cousin *Homo sapiens*, and Olson does not seem to have had the time to consider the ways in which the two differ. As a consequence, *The Rise and Decline of Nations* provides interesting and compelling interpretations of those situations in which the actors, under the pressure of the *Zeitgeist*, their own mindsets, or circumstances beyond their control, play out their roles according to a neoclassical script. (Since neoclassical economics conceives of a static world in which optimum efficiency also means zero profit, these dramas are likely to read like tragedies.) But Olson has little to contribute to our understanding of that vast expanse of history wherein attitudes, technology, or chance have allowed families and societies to beat the game with the zero sum—or have pushed them towards games with a more pernicious inner logic.

Olson's theory does help to explain the postwar performance of the American economy. As he rightly points out, neither doctrinaire Keynesianism nor monetarist orthodoxy can account for the conjuncture of rapid inflation, high unemployment, and slow growth that has dogged the United States since the early 1970s. But many of the curious paradoxes of macroeconomic

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change in America today can be resolved if we think of the U.S. system as two distinct but connected economies. In the first, the laws of free competition prevail; in the second (which is dominated by shortsighted unions, restrictive corporate interests, and other "distributional coalitions") cartel practices are the rule.

Olson's model shows, in effect, that the cartelized portion of the economy could "dump" unemployment and higher prices on the less protected sectors, with the result that productivity and growth in all sectors would ultimately be constrained. For such a two-track economy, inflation and disinflation would have unexpected repercussions. Unanticipated inflation would tend to *increase* productivity (hence growth and jobs) because of its disproportionate impact on the profits and incomes of price-fixers, who induce market imperfection. By contrast, an unanticipated disinflation should result in a surprisingly large loss of output and jobs, since it would transfer resources to the (presumably inefficient) sectors which can restrict their own output and set their own prices. This model certainly seems to be in keeping with America's adjustment to the food and oil price shocks of 1972-74, and with the economy's severe reaction to the tighter monetary policy that the Federal Reserve instituted late in 1979. Olson's care in mapping out the theoretical connections between microeconomic forces and macroeconomic events is as commendable as it is rare; his work in this section of *The Rise and Decline of Nations* sets a good example which more statistically-inclined economists might usefully follow.

Olson himself, however, fails to pursue one of the most interesting implications of his own model. According to his argument, a *progressive* economic slowdown should only come with *steadily increasing* cartelization (or cartel-like behavior) in the economy. But where do we see the rise of powerful and restrictive special interest groups on the American horizon? Unionized labor as a fraction of the American workforce peaked in the early 1950s and has been declining ever since. Meticulous long-term studies have failed to detect any trend toward greater concentration in American industry over the course of the twentieth century. Indeed, the only major sector of the American economy whose power has been growing steadily over the past decades is the federal government. To be true to his model, Olson would have to argue that American government is, or has become, a primary cause of the nation's presumably increasing social rigidity.

One may sympathize with a scholar's inclination to back away from battle on such terrain. Whatever the merits of this argument, it would be difficult to claim this was the *whole* truth. Placing the responsibility for America's economic slowdown directly on government would require some delicate and debatable assumptions about the mismatch between public policy and national opinion in a democracy. On the other hand, identifying government as merely a "proximate variable" in economic slowdown—as an instrument conveying action dictated by other, underlying forces—would

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immediately make the American economic tableau too complex to be described gracefully by Mr. Olson's neat model.

In modern America Olson's model fits the behavior of an economy that is governed by atypical circumstance. A cohort of Americans that has been dubbed the "me generation" has entered the labor force and the consumer pool; the Vietnam war and its aftermath abroad, and new, unfamiliar forms of social conflict at home seem to have shaken popular confidence in the "system" and in the future; personal expectations are said to be in the process of readjusting downwards. The limitations of a theory which ascribes decisive economic significance to the structure of special interests within society is better illustrated in other times and other places.

For example, think of a society in which nearly two-fifths of the labor force is unionized—about twice as much as in the United States today. Imagine further that these unions negotiate new contracts with employers every spring, and that negotiations take place on a company by company basis, so that any of a number of unions could bring a given firm to its knees while sparing rival businesses. Imagine next that industry in the leading sectors of this nation's economy is heavily cartelized, with a few major firms in each of these areas not only setting prices, but also augmenting their profits through preferential access to cheap credit. In these favored firms it is extremely difficult for salaried employees to be fired; even if their performance is deemed inferior by their peers and superiors they can expect a lifetime of raises and promotions. Finally, imagine that government collaborates with these favored companies by erecting elaborate non-tariff barriers against foreign competitors in certain key markets, and allocates contracts among bidders in such a way that projects do not always go to the firm with the lowest price.

If I read Olson correctly, such a society would be a prime candidate for stagflation. Yet the country I have just described is not Britain. It is, of course, postwar Japan, the industrialized nation with the highest growth rate since the 1950s, and one of the very best records on inflation and unemployment since the early 1970s. Admittedly, Japan is probably plagued less by special interest groups than I have just made it sound. Large sectors of the Japanese economy, including the subcontractors under the zaibatsu, are unprotected and breathlessly competitive; non-unionized workers can expect very little in the way of unemployment insurances if they fall out of a job; and despite its reputed inhospitality to foreign goods, most of the Japanese economy is more open to imports than are those of the Western European nations which complain about unfair Japanese trading practices.

Nevertheless, it would be difficult to marshall the Japanese experience behind an argument that powerful special interest groups bring on economic paralysis. Japan's postwar success is more easi-

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ly explained by the attitudes that animate its special interest groups than by the structure of those groups or the personal interests these would "logically" generate. Visitors and observers returning from Japan are consistently struck by the fact that workers, managers, industrial leaders, and government officials by and large act *as if* they were living in an environment in which it was necessary to minimize costs and maximize productivity to survive. That is, they seem to disregard the ostensible protection they enjoy against economic competition. Olson would like to explain Japan's postwar drive for efficiency as a consequence of weak "distributional coalitions" and "encompassing alliances," but his command of modern Japanese history is less than complete. (He believes, for example, that Japan was a totalitarian nation before the American occupation.)

Just as Olson's theory falters on Japan, where growth has been rapid, it stumbles over Britain, where postwar growth has been disappointingly slow. Again, Olson sees special interest groups as a principal source of British economic troubles, and argues, in accordance with his theory, that the UK's infrastructure of collusive action has been growing more powerful over time because the nation has been comparatively undisturbed by social upheaval for several centuries. Rather an increasingly burdensome "class structure" built on this network of special interest organizations has played a significant role in impeding Great Britain's economic development.

For all the currency of the "class structure" theory of British economic decline, there is curiously little hard evidence to support it. As Olson realizes, we have no convenient tools for measuring the growth of "distributional coalitions" across the centuries. Consequently, most of his proof for the rise of British special interest groups is of the "it stands to reason" variety. But history is not an excercise in logic. It is by no means a foregone conclusion that the Britain of the "rotten borough" and the Corn Laws was less afflicted by special interest machinations than the Britain of mass education and universal suffrage. "Class structure" is also difficult to measure, but if its workings are represented in social mobility, Olson's hypothesis about the growing burden of social rigidities is incorrect. Evidence from the few careful studies of social mobility in the United Kingdom suggests that the fraction of people moving up—and down—the social ladder is about the same as in the United States, and may be slightly higher than on the continent. These studies give no support to the contention that social mobility in Britain has been declining in recent decades.

Britain's loss of industrial preeminence was a long and complex historical process which began in the late nineteenth century, when the British were edged out by the Germans in the then new fields of precision metallurgy and complex chemical processing. It was the less protected and less unionized portions of the British econ-

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omy in which the "British disease" first appeared, and from which it seems to have spread.

If the typical worker in the British motor industry today produces half as many cars as his counterpart in Belgium—even though the value and efficiency of the equipment at their disposal is essentially the same—this may tell us something about differences in attitudes towards work and leisure, or towards authority, or towards the future. But Olson is unwilling to explore the possibility that British attitudes may have shifted in recent times.

And so Olson's theory moves from one nation to the next. Olson accounts for West Germany's postwar economic miracle by pointing to that country's comparatively unimportant postwar special interest networking and reduced government regulation of industry and business; but he fails to account for, or even mention, the fact that West Germany came in thirteenth out of eighteen industrialized nations in per capita growth for the years 1960 to 1978 in his own chart (p. 6). He explains why nations like Italy (which he sees as unstable and "ungovernable") are less capable of economic growth, while overlooking the fact that Italy's per capita growth during the 1960s was unsurpassed by any of the thirteen European countries he compares it against. He devotes attention to Hong Kong, where a lack of special interest networking is credited with a role in promoting economic growth, but he ignores neighboring Macau, which is still a backwater despite its own lack of restrictive "collective action groups."

Things do not improve as we go back in time. Olson's explanation for China's stagnation in the early modern period focuses exclusively on collusive guilds; we hear nothing about China's agrarian difficulties, the fiscal and administrative policies of its imposing bureaucracy, or contemporary attitudes towards science and innovation, to name but three other factors which might have had an influence. Even more imaginative is Olson's description of the Indian caste system, in which a unique and intricate order of religious and wordly obligations is portrayed as a sort of "second best" game-theory solution to a problem where everyone must join an exclusive group to draw benefits from society. Olson repeatedly states that he is dissatisfied with *ad hoc* explanations of historical phenomena; alas, there is much about human history that is *ad hoc*. There are even aspects which are recognizably human.

In the final analysis, Olson does not seem to be terribly interested in understanding human beings or the sorts of lives they lead. This is not a promising disposition for a self-styled economic historian. In the tawdry details of history lie exciting and even powerful hints at man's ability to use different institutions to achieve a common end, his behavior in the face of different sorts of "disequilibria," and his willingness to act against his own immediate interest for better or worse—to cite just three of the economic responses which go unexplored in *The Rise and Decline of*

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Nations. The notion that special interest groups inexorably restrict economic growth is not only parochial, but manifestly incorrect. More than forty years ago Joseph Schumpeter demonstrated that monopoly profits could be consistent with accelerated economic growth in a world which knew technological innovation; the key, he wrote, would be the practices and attitudes of the monopolists. This insight, which is entirely lost on *The Rise and Decline of Nations*, is a reminder of how much more economics has lost in its rise from a makeshift art to an elegant "science."

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"Writers" and Rogues

ROGER STARR

***Craig Castleman:* Getting Up.** *MIT Press. 175 pp. $15.00.*

GETTING UP is a book about the graffiti in the New York subway system. Among those who practice the art of painting subway cars, primarily with cans of spray paint, the phrase "getting up" has a special meaning. It signifies the success of the graffitist (in their language, the "writer") in covering cars with his work. The author of *Getting Up* is an Assistant Professor of Communications at Baruch College, and he has certainly mastered the art of getting the underground graffitists to communicate their feelings and purposes to him. In short, Professor Castleman's book tells us perhaps a little more than we really want to know about the graffiti writers, how they operate, and how they feel about themselves, and somewhat less than we want to know about their product.

The most interesting question about graffiti is whether it can be considered art. When the management of the Metropolitan Transportation Authority (the public agency that manages the subway and bus system of the New York region) removes graffiti from its subway cars, is it restoring public property? Or is it merely committing vandalism against works of creative imagination, comparable, though on a much smaller scale, to whitewashing the wall on which Leonardo da Vinci painted his *Last Supper*?

Professor Castleman offers the reader very little help in deciding between these two alternatives. One wonders, however, whether anyone would spend so much time listening to graffiti writers and recording their remarks—and, even more remarkably, getting them to express themselves verbally in such detail—if he did not think

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their work important. Such an inference, however, may not be fair to the professor, who seems more interested in the social organization of graffiti writers, their methods of operation, their language, and the social structures of their world than he is in the "quality" of their work.

Of course, it is possible to believe that people are artists simply because they live like artists, a description that certainly fits the so-called lifestyle of graffiti writers. It also fits the stereotype of the artist that developed in Western Europe after the industrial revolution, when the artist came to represent the possibility of living wholly in opposition to the rigid mores of the emerging bourgeoisie.

The artist as rebel is a familiar figure, not only in real life and in literature, but on the operatic stage. The nineteenth century certainly made good use of the artist as a hero whose first responsibility was to challenge the assumptions of his culture, not merely in his work, but in his whole way of life. The tradition continues. Many people expect the artist to live a bohemian life in which the values of the unfeeling bourgeois society are turned upside down: Non-working is deemed a virtue, and acceptance of money for one's art is a disgrace (until, of course, it is actually offered). The bohemian is supposed to assume that over-indulgence in alcohol or narcotics is a sign of the internal pressures of the artistic sensibility; that family life stifles; that a basic emotional sympathy with radical political change is a prerequisite to political decency; and that being in debt is a sign that one possesses important virtues other than those extolled by the business world.

All this, of course, is a vulgar caricature. Yet at bottom there is enough validity in the notion that the artist must be "different" to cause immense confusion. One of the functions of art must be to stimulate new ways of understanding human relationships, of using the language, of seeing the world, of hearing sounds. If art is not "different" in this sense, what good is it?

The unresolved question left for us by Professor Castleman is whether we are to believe that graffiti writers are simply people who want to live in opposition to society, like burglars and confidence men, or whether some are really living to satisfy their aesthetic sensibilities. Professor Castleman proves beyond argument that graffiiti writers share the anticonventional attitudes expected of the artist in revolt. Although some are old enough to work, few of them do. Many have dropped out of schools or colleges, having, in their view, nothing to learn from conventional education. Their ties to families are either fragile or confused. They have no marriage plans. They desire to shock those who see their work, and particularly enjoy the fact that their work is not only unacceptable to the bourgeoisie, but downright illegal. They are engaged in a constant confrontation with the police and subway guards—with whom, nevertheless, they often have a personal un-

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derstanding quite natural in the symbiosis between the lawbreaker and law-enforcer. Both sides recognize their need for the other.

CASTLEMAN describes in some detail—frequently with the help of direct quotations—the motivations and habits of the "writers." Although he tells us that the "writers" vary in age, most are in their teens, and the great majority are fifteen years old. (Although one of the most active, but least stylish, writers is alleged to be an old lady who writes the word "pray" in telephone booths.) Most of the "writers" are fleet of foot, well able to keep ahead of policemen and subway guards. They are proud of their work, and proud of the recognition they first receive from experienced writers. The word "toy" is an expression of disdain, generally applied to the works that have no great style or visibility, and, by extension, to those writers who can produce nothing better than toys.

According to the author, the police have broken up many of the gatherings of graffitists which take place in certain subway stations where lines cross, making it possible for writers on one set of lines to see the work of those on another. Graffitists clearly enjoy each other's company and admiration, once they have found that both parties qualify as serious writers. Castleman quotes one of his favorite sources—who claims that the name "Bama" he signs on his work is an East African term meaning "poet" or "prophet" —as saying that even violent, criminal gangs respect graffiti writers for their courage. The artists are generally exempt from episodes of gang warfare. There are a few examples of fairly well-organized graffiti groups that might be considered gangs, but they seem to form and dissolve with even less stability than street gangs.

In addition to the respect in which the writers are held by the juvenile gangsters, the two groups share their antipathy towards and alienation from the workaday world (though some older "writers" are, in fact, regularly employed, and some have even gone to art school, exhibited in galleries, or worked as commercial artists). Although the normal world works in the daytime, both "writers" and gang members are most active at night. The language of both types of young people expresses an inversion of customary meaning. Professor Castleman puts it thus: "Since most writers see themselves as outlaw artists, many of their terms of approval have a negative ring. Among the strongest of these terms are 'nasty,' 'the Death,' 'vicious,' 'nad,' and 'dirty'." The "writers" are also familiar with alcohol and drugs, and celebrate marijuana in some of their work. Besides the political statement inherent in the illegality of all graffiti, the most serious pieces convey a political message, vague in details, but clearly opposed to the "straight" world.

IN short, if living like an artist means that one is an artist, Professor Castleman's subjects must qualify as artists. But this syllogism has a faulty minor premise. There has never been a shortage of people who condemn social norms at any particular time,

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with or without reason, and with or without the desire or the ability to produce a coherent work of art. The collapse of traditional artistic forms complicates the process of judging a work of art, and fashions in high taste vary almost as quickly as styles in clothes; but no one, I think, believes that painters can be judged by their clothes or their unconventional living. Professor Castleman's work makes clear that most—not all, but most—of the people who place designs on subway cars would *not* do so if they were paid to do the work, if it were legal, or if it were honored by the society they reject. It is hard to escape the conclusion that much of the satisfaction in this work is not to be gained in the production or realization of the work itself, but in the fact that it is illicit, that it does make a permanent mark in a visible place, and that it gives one status as a well-known figure within the "opposition."

While Professor Castleman goes into somewhat tedious detail in identifying the several groups or gangs who are in the "writing" business, and especially those "writers" who have become noted for their vision and style, it is difficult for the reader to follow the distinctions except in the most general terms. But the sense of comradeship in opposition to the rest of the world is clear.

One of the more interesting aspects of Castleman's delineation of the "writing" ethos is made plain when he quotes the joyful exclamations with which one of them watches cars, whose outsides he has painted, as they roar past passengers. "I think those people who saw it [the painted train] went home that night and didn't watch TV. They talked about the train they saw." At a later point in the book, this sentiment is reinforced by a quotation a transit policeman attributed to an apprehended graffiti writer: "You can cut both my hands off, you can cut both my arms off. I'll still paint the trains every day because I owe it to the people of New York City to make these trains beautiful." Perhaps this young man really is moved by the artistic impulse to make things beautiful, but then again he may simply be expressing the bravado of one who believes that the only reason he is not fully appreciated is that most people have been seduced by the false culture in which they are mired.

None of this, however, makes the graffiti writers into artists. Indeed, only a minority of the people who do write on subway cars achieve satisfaction from the artistic content of what they are inscribing. The graffiti movement seems to have started with the simple impulse to make oneself known by inscribing a name, initials, or a street number on the car, an impulse of no greater significance to the writer than carving one's initials on a park tree. To the subway rider, the meaningless squiggles and symbols that deface the *interior* of the car are by far the most noticeable form of graffiti. Their very lack of content indicates that they do not provide their writer the aesthetic satisfactions of conceiving and executing a new vision. The medium—in this case, public property

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—is indeed the message; there is scarcely a pretense that graffiti constitutes anything other than a deliberate invasion of forbidden space, the anti-bourgeois definition of the artist's role with none of the aesthetic substance. It simply represents a challenge to authority, and as is frequently noted, has the result of making most passengers recognize that their own safety and security cannot be guaranteed by anyone.

The more complicated issue concerns the drawings and paintings on the exterior of the cars, in which there is not only the element of design, but sometimes brilliant color and an explicit political or moral vision. Is this, then, a sort of art? Possibly, for here there is the tension between the space available on the cars and the vision with which the writers seek to fill it. (In one case described by Professor Castleman, a group of writers sought to fill the side, not merely of one car, but of a whole train of ten, with design elements that combined individual technique with some over-riding unity.) But when the few "writers" who have recognizable talent find some place in either the commercial or the fine arts worlds, they turn to a more conventional frame. It remains to be seen whether any of the less defiant art forms will be equally satisfactory.

Perhaps the most important comment to be made by graffiti is its comment on the state of the arts at this time: that since painting has burst out of the frame and sculpture has jumped from the pedestal, the opportunity for a truly new vision has been so reduced that only the most shocking invasion of inartistic space is able to fulfill the modern artistic mission. Graffiti is as much a comment on the confusion of the arts as it is a comment on our loss of civility—the unspoken adherence, once taken for granted, to the rules that govern behavior in public spaces. This spreading disintegration of standards of appropriateness is as much responsible for the fear that the graffiti elicits from the subway rider as are the more immediate fears of safety.

Roger Starr is on the editorial board of the New York Times.

Look for the Marxist Label

STEPHEN MILLER

***Bertell Ollman and Edward Vernoff, eds.:* The Left Academy: Marxist Scholarship on American Campuses.** *McGraw-Hill. 290 pp. $8.95 paper.*

With the professionalization of scholarship in the late nineteenth century, those who wrote books not intended for the

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common reader—books that were based on scholarly research—came to see themselves as members of distinct fields of inquiry or disciplines: art historians, political scientists, sociologists, philosophers, and so on. In the world of contemporary scholarship, which exists mainly in the academy, there are also many sub-disciplinary labels that vaguely describe the approach of a scholar to his discipline, so that in philosophy we find Kantians or Thomists, and in sociology we find Weberians. Most scholars, however, do not assign themselves such a name-label, perhaps because they think it intellectually confining to regard oneself as overwhelmingly in the debt of one thinker. But if the use of most such labels is not so popular in the academy today—it is rare, for example, to find a philosopher who calls himself a Thomist—the use of the Marxist label continues to flourish.

Marxists, of course, are not confined to one discipline. In *The Left Academy* there are essays on Marxist psychology, sociology, economics, political science, anthropology, history, and philosophy. Moreover, the editors promise us a second volume. Will it include an essay on Marxist physics or Marxist molecular biology? Probably not, because Marxists are mainly found in the social sciences. But one can never tell. (I, for one, never knew until I read this volume that there were Marxist psychologists.)

To the editors of this collection, the "Marxist cultural revolution" is a cause for celebration. They cite the fact that there are more than 400 courses given today in Marxist philosophy as evidence that "critical thinking" finally has entered the academy. Contemporary Marxists, the editors stress, are not like the Marxists of old; they are not members of a political party and owe no allegiance to the Soviet Union. Although the editors say that even the new Marxists are at "a grave disadvantage in the competition for scarce jobs, promotions, and tenure in the academy," this complaint does not square with the fact that many of the writers in this volume, most of whom would call themselves Marxists, hold chairs at major universities throughout the country. No doubt at some universities being a Marxist is a liability, but there are by now enough tenured Marxists in the academy to constitute an "old-boy network" that makes it possible for many fledgling Marxist scholars to get jobs, publish books, secure tenure.

In their introduction the editors do not address the question of why this revolution has occurred, but this defect is somewhat remedied by Marx Wartofsky's essay, "Marx Among the Philosophers." Wartofsky, whose essay—like Eleanor Leacock's essay on "Marxism and Anthropology"—is scholarly in spirit rather than polemical, says that the new Marxists are radicals from the 1960s who, despite their animosity towards bourgeois professors, stayed the course, got their Ph.D.s, and became professors themselves. As a result, "the study of Marxism moved from the ad hoc study groups and the 'movement' forms of education into the curriculum proper." And Marxism, Wartofsky says, became respectable, if not generally ac-

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ceptable. In the past five years, more than 50 books on Marx have been published in the United States and there are five North American journals of philosophy that focus on Marxism. (Wartofsky also points out that any run-of-the-mill bookstore in a suburban shopping center usually has several paperback collections of Marx's writings on hand.) Thus, 99 years after the Master of Dialectics died, Marxist thought has come of age in the American university.

But what does it mean to be a Marxist? By that I don't mean: What is Marxism? There are innumerable excellent studies of the configurations of Marx's thought, most of them by scholars who would not call themselves Marxists—scholars such as Sidney Hook, Isaiah Berlin, George Lichtheim, Bertram Wolfe, John Plamenatz, Shlomo Avineri, and Leszek Kolakowski, to name only some of the most prominent. And in this volume Marx Wartofsky's essay is a good if somewhat rapid-fire general survey of the central questions that preoccupy scholars of Marx. A scholar of Marx may or may not be a Marxist, but what does a scholar have in mind when he calls himself a Marxist?

Understandably, the scholars in this volume who accept—indeed welcome—the label try to answer this question. Richard Flacks, the author of the essay on "Marxism and Sociology," writes that Marxists think "social explanation ought to be historical and historically specific." If this criterion were used to decide who can enter the guild then most scholars could join, since the remark is a commonplace. Flacks also says that Marxists attempt to construct "a *scientific* understanding of social life"; but Michael Merrill and Michael Wallace, the joint authors of the essay on "Marxism and History," disagree, saying that Marxists offer only a critical view of the world, not a scientific one.

Flacks also argues that "what is distinctively Marxist is the view that *classes* are the most important collectivity for interpreting social development." But if Marxist scholars are Marxist insofar as they believe that "class analysis is the most fruitful way to interpret and predict historical development," which is what Flacks writes, then they are in trouble, since they have a hard time even convincing themselves that class is as significant a factor as Marx made it out to be. Flacks's own argument teeters on the brink of absurdity when he admits that those who embrace a more orthodox Marxian perspective—that is, rely heavily on class analysis—are "deeply affected by the lack of revolutionary class consciousness among workers in the advanced capitalist countries." In this context, "deeply affected" means that Marxist scholars are puzzled, frustrated, and disturbed by the working class's refusal to behave the way Marx said it would behave.

If these self-proclaimed Marxists realize, albeit grudgingly, that class analysis is not sufficient, in what way are they descendants of Marx? Can a true Marxist say, as Herbert Gintis does in "The Reemergence of Marxian Economics in America," that the main

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tenet of contemporary Marxist economists is democratic control of the workplace, not state ownership of the means of production? Gintis also admits that traditional Marxian theories do not go very far towards explaining the economic crisis that afflicts advanced industrial nations. Even Mark Kesselman, the author of "The State and Class Struggle: Trends in Marxist Political Science," writes that there is no plausible socialist alternative to the current economic crisis, "the lack of which is painfully obvious in current Marxist scholarship."

So even though most of the writers in *The Left Academy* have abandoned several tenets of traditional Marxian theory, they still wish to be called Marxists simply because they believe in the need for radical political and economic change—believe also that only Marxists can lead the world into a glorious future. Gintis writes that Marxism "presents a unique and emancipatory conception of human nature." The authors of the essay on Marxist history writes that Marxism "is a long-term historical movement of liberation." And Kesselman, equally convinced of the necessity for Marxian socialism, urges Marxists to keep the faith and not to despair: "However difficult the task, more than ever the alternative remains socialism or barbarism." Though the Marxist script for change is a muddle, as even these self-proclaimed Marxists admit, and though similar scripts have proven to be a disaster throughout the world, these scholars nevertheless yearn for a brave new world.

It is clear, then, that when a scholar decides to call himself a Marxist it is less because he favors a particular tool of scholarly analysis—a particular methodology or approach to his field of inquiry—than because he has made an emotional commitment to working for a future that is radically different from the present. The key word is commitment—a commitment, as the authors of the essay on Marxist history write, "to participate in history's making," a commitment to creating a world where people will be treated as individuals, not as things (I paraphrase Gintis). In short, to be a Marxist scholar is to hold scholarship a subsidiary activity and to prize political activism above all. In another essay Kesselman stresses the importance of being an activist teacher, writing that "the key college arena where teachers struggle . . . is our daily workplace: the classroom." And Ollman has said that his main concern is to transform students into revolutionaries "free of bourgeois values. . . ." Some writers in this collection (Wartofsky and Leacock) do not appear to be committed Marxists in this sense, but those who are would agree, I think, with Kesselman and Ollman that Marxist teachers regard teaching as a political activity. As Flacks writes, "Marx himself could see no way that intellectuals could comprehend or affect history unless they were identified with movements for human emancipation, and this remains the perspective of most Marxists in the academy."

Should we be scandalized that there are teachers in the acad-

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emy who spend most of their time in the classroom trying to gain converts to their cause? A Marxist historian may (will?) distort the historical evidence at his command to such a degree that his students will get a very cockeyed view of the past, but the academy is full of scholars who distort evidence to peddle their own views of the world. What is disturbing about Marxist scholars is not so much their commitment to radical political change; after all, they are quite open about this commitment. What is disturbing is that this commitment generally makes them intellectually rigid. For their Marxism is a wonderful tool that gives them an answer for everything—even an answer for the failures of Marxism. Flacks writes: "the method of analysis Marx used to understand social domination and conflict is the most powerful way of understanding the very failures of his theory." There is no possibility, it would seem, of controverting the committed Marxist. His Marxism makes him invulnerable to argument since, among other things, it enables him to assume that those who disagree with him do so because they are, as the editors write, spokesmen for "narrow political interests and biases. . . ."

Marxists, the authors of the essay on Marxist history imply, will "make the world true." Marxism, Kesselman suggests, will rid the world of racism, sexism, imperialism, repression, and inequality. Such faith in the wonder-working powers of Marxism reveals that many of these scholars have little interest in critical thinking. As Kolakowski writes in the epilogue to his *Main Currents of Marxism*, "The influence that Marxism has achieved, far from being the result or proof of its scientific character, is almost entirely due to its prophetic, fantastic, and irrational elements." In many ways contemporary Marxists resemble the Puritan enthusiasts John Dryden castigated in *Religio Laici*. They are full of "great zeal and little thought." And they buzz and swarm around the sacred text of Marx in the same way the seventeeth-century Puritans (according to Dryden) buzzed and swarmed around the Bible: "with rude devotion warm."

If contemporary Marxists share the millenarian hopes of Marx, they also possess his conviction that capitalist societies are doomed eventually to self-destruct. Most of the essays in *The Left Academy* are preoccupied with the weaknesses of capitalist societies. These societies, the Marxist never tire of saying, are mired in stagnation, burdened with contradictions, and locked in crisis. It seems that most of the research done by Marxist scholars in history, political science, sociology, and economics focuses on capitalist societies. As Kesselman writes: "Many current research efforts focus on variations in the political orientation and strategy of the working class in different capitalist societies."

What, one wonders, about the stagnation, contradictions, and crises of the dozens of existing socialist societies? Raising such a question, the Marxists imply, is bad form, a kind of Red-baiting. For

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either they proclaim that societies based on the Leninist model are not Marxist societies—and therefore irrelevant to their own vision of the future—or they speak, as Gintis does in vintage social scientese, of "the many communalities of advanced capitalist and state socialist societies." Gintis's point is the one Herbert Marcuse made in *One-Dimensional Man*: There is little to choose between advanced capitalist and state socialist societies, so if you study advanced capitalist societies you are, in effect, studying state socialist ones. It is a remark only a Marxist, soaring on the wings of his dialectics, could make. If he bothered to look at the real world, Gintis would notice that refugees line up to knock on the doors of the advanced capitalist nations, not on the doors of the state socialist nations.

But even if one accepts the Marxists' contention that the Leninist variety of Marxism is not what they have in mind, why do they not pay more attention to socialist societies which have strayed from the Bolshevik model? If they looked at Yugoslavia, for example, they would learn that it suffers from a staggering international debt, is mired in stagnation, and burdened with contradictions. And, despite its vaunted program of "democratic control" of the workplace, it is far from a democratic society (though not nearly as repressive as the Soviet Union). Finally, they would also learn that, according to a recent article in the *Wall Street Journal*, a leading Belgrade weekly has called for changes in investment planning that would move the country towards a more market-oriented, entrepreneurial approach to planning.

Marxist scholars, then, are not only rigid, they also are provincial. Yet to make such an accusation is to paint Marxists in the academy with a very broad brush. Anyone can cite notable works of scholarship by writers who regard themselves as Marxists, and anyone can cite rigid and provincial scholars who are not Marxists. But if most of the essays in this volume are any indication, Marxist scholarship is a very second-rate affair, consisting mainly of a jargon-ridden litany in which capitalism is continually assailed for promoting all the evils of mankind. For example, the two historians in the volume make the astonishing claim that "racism, patriarchy and capitalism are intimately intertwined. . . ."

WHAT is the future of Marxist scholarship in the academy? The editors of *The Left Academy* enthuse about a new era dawning on the American campus, and some scholars are inclined to agree with them. The *New York Times* recently reported that Theodore J. Lowi, a well-known political scientist, said that "leftist thinking in the European sense may in fact strengthen in the United States . . . because students who were always assigned Marx to read may find that kind of writing more plausible today. There is a stronger foundation for it now." Moreover, in their effort to establish a network in the academy, Marxist scholars wield a powerful weapon: the flag of McCarthyism. Whenever their work

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is attacked, they invariably accuse the detractors of trying to deny them advancement or tenure for political, not scholarly, reasons. Since McCarthyism is a charge that cows all but the most resolute of academics, Marxist scholars often get tenure.

Nevertheless, I think the long-range prospects for Marxist scholarship in the academy are gloomy, mainly because the major scholars on the left have become impatient or bored with those who continually espouse their allegiance to Marx. In a recent issue of the left-wing journal, *democracy*, Professor Sheldon Wolin wrote that those who desire radical change in America should look at the work of John Locke, not Karl Marx. In their search for a domestic version of socialist thought, the left has turned more and more to American populism. Many socialist writers preach the virtues of decentralization and local government. And many, unlike Marx, are opposed to economic growth and harbor an inordinate suspicion of technological progress. Some of them will continue to call themselves Marxists, but their thought conforms to Marx's only in the sense that they too desire radical change and speak of the need for liberation. Marxist thought, I suspect, will eventually wither away, but utopian thought never will disappear. The dream of a future golden age will always entrance some people in the academy, but whether anv students will listen to them as they recount their dreams is hard to say.

Stephen Miller is author of the forthcoming book, Special Interests.

The Unloved Profession

JOHN S. PETERSON

***Colin Brewer and June Lait*: Can Social Work Survive?** *Temple Smith. 235 pp. £9.95.*

It is curious that the social work profession has received so little criticism from outsiders. While virtually every other profession—law, medicine, teaching, engineering—has had its professional pretensions skewered, social work is perpetually let off the hook. The silence can partly be attributed to the fact that social work does not present a very glamorous target for investigative journalists, nor a very interesting field of inquiry for those who are not social-work academics. Further, while most professions produce defectors who can be counted on to give a lively "inside" critique, this rarely happens with social work. Paradoxically, although the profession generates a high number of dropouts among its enlisted personnel, very few former social workers bother to go public with their pro-

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fessional disillusionment. Social work is shielded by the fact that defectors from the profession usually fall into one of three categories: those who feel guilty, those exhausted to the point of indifference, and those too angry to collect their thoughts on the subject.

But fortunately, a number of social work veterans are beginning to speak out. In Britain, two of the coolest and most level headed are Colin Brewer and June Lait. Their recent book, *Can Social Work Survive?*, is indispensable to understanding the profession. Both write with impeccable credentials—Brewer as a psychiatrist and a prominent medical journalist, and Lait as a former social and childcare worker now a lecturer in social policy at University College, Swansea. Their carefully documented study provides a wealth of long overdue material. Although the book has received little attention, it deserves a wide audience; in particular it deserves to be placed in the hands of every aspiring social work student. And with some luck it may even provoke a similar study of American social work.

Brewer and Lait have written a brief for the dismantling of social work as an independent profession. They do not challenge the profession's desire to do good—a desire they feel is not exclusive to social workers. Neither is their book concerned with the social ills that the social worker is in business to cure. Rather, they focus on the narrow, but fundamental, questions of professional status: Why do social workers have such difficulty in defining their goals and functions? In what does their expertise consist? What do social workers do that is not already being done by doctors, nurses, childcare workers, hospital attendants, public health officials, teachers, ministers, nuns, judges, and the police, or that could not be done by less exalted—though lower salaried—clerks and secretaries? Why are so many social workers confused and unhappy about their jobs, and so ineffectual in aiding the poor? Indeed, how did the profession manage to become one?

In many respects, the most intriguing parts of the book are those which trace the historical growth of British social work. Of particular interest is the evolution of training as the "profession" emerged. In mid-Victorian charitable agencies one can observe the development of the skills that eventually comprised the professional training of social workers. For example, workers at the Charity Organization Society were initially instructed in financial record keeping, but gradually, according to Brewer and Lait, "training came to include instruction about human behavior and social functioning, it being hoped that these aspects would enable decisions about deserving and undeserving recipients to be made on the basis of sound theory rather than individual prejudice." So the reliance on social science theory as a means of understanding and transforming the poor also began at the Society.

Working in the hospitals of the late-Victorian era we find a breed of aristocrat who may be regarded as the prototype of the modern

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social worker. The first lady almoners (medical social workers) were initially volunteers, visitors whose primary function was to soothe and provide a kind of bedside "benevolence." They also appear to have been women of independent means, highly imperious, and accustomed to doing and getting what they pleased. What pleased, in this case, was professional status, and given their wealth and gilt-edged social standing they were able to obtain it quite easily. Unlike doctors and nurses, the almoners were never subject to performance standards, or required to define their task or to submit their high-minded benevolence to any market test. Nor, of course, were they exposed to the bedpan drudgery of employment as childcare workers or hospital attendants. Their elite social status seems to have insulated them from all this, just as their connections and wealth enabled them to assert the need for training at the university level. Although almoners were phased out by the 1936 Health Act, Brewer and Lait hold them responsible for saddling social work with a number of debilitating characteristics.

In the meantime, fascination with social science theory and the demand for training had both taken root at the London School of Economics. In 1929 the school began training psychiatric social workers (PSWs), a group with some claim of being the profession's intellectuals. The authors report that psychiatric training was not a response to some clearly identifiable public need. We can see now, especially in the U.S., that the real consequence of its introduction was to provide social workers with a working ideology. Although social work can be a political act, socialism was a very minor influence in its development compared to that of the psychoanalytic theories of Freud, Adler, Piaget, and others. From the 1930s on, the profession increasingly came to define its mission to the poor in terms of therapy and psychological adjustment, rather than of service or moral improvement.

Brewer and Lait identify two key themes that run through the development of psychiatric social work: an anxious need to define the professional activity, and a preoccupation with status. A desire to maintain an elite image among social workers, so as not to seem subservient to the medical profession, is a particularly striking example of the latter. The authors illustrate these concerns by citing a 1942 conference which deplored the fact that PSWs had been forced to count and label children as they came off evacuation trains during the war: "This had created what the profession styles an identity crisis in some PSWs and there was long debate about the propriety of allocating such mundane tasks to those whose experience was with the psyche."

Whatever doubts were plaguing its PSWs, the immediate postwar era seems to have been a time of euphoria for the profession as a whole. Judging by Brewer's and Lait's account, the British "social work interest" was too busy expanding its base to have time for identity crises or precise definitions. One prime objective

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was to establish general social-work programs in the universities, a goal which would win social work acceptance as a respectable middle-class profession. Moreover, what the British welfare state seemed to need was a curriculum of social science courses that would produce workers certified to serve its rapidly expanding social work service. The "social work interest" got its wish. By the early 1960s, British colleges and universities had accepted social work as a respectable intellectual discipline. By 1970, a second wish was granted. Acting on the recommendation of the Seebohm Committee (a blue-ribbon panel dominated by social work experts), Parliament passed the Social Services Act, which created a system of social service departments to absorb the functions of local health and welfare agencies. Having secured a base in academia, the profession had now managed to consolidate its considerable influence in national government. By all rights, the 1970s should have seen the realization of the profession's hopes.

INSTEAD, social work went awry in Britain, as it did here in the U.S. Brewer and Lait believe that the past decade has been so disastrous precisely because of the pursuit of professionalism, and my own experiences—in protective custody and group houses, coupled with a stint of Head Start teaching—lead me to the same conclusion. The professionalization of social workers in the U.S. has had the perverse effect of *reducing* the quality of care: Students are trained in the latest social science and psychological theories, but are unprepared for the grim realities of dealing with the infirm on a day-to-day, face-to-face basis.

In one sense, it is possible to sympathize with the current generation of social workers. The notion that one could make a 9-to-5, middle-class career of caring—especially without practical skills or religious faith to sustain it—seems a bit dubious; and yet, schools of social work were permitted to sell this notion to students through the 1960s and 1970s. Social work educators loaded their curricula with social science theory and sent their students out in the world under the illusion they would be practicing some sort of public therapy. Students who took this education seriously were likely to feel as if they had been blind-sided.

It is ironic that, for all their training in human relationships, social workers often have a great deal of trouble getting along with their fellow "helping and caring" professionals. Brewer and Lait record a number of exchanges from social work's ongoing battle with the medical profession, a profession which has always regarded these workers skeptically. Unfortunately, when the battle is extended to all the other hospital professions, the battle becomes a war. No wonder social workers are—as one writer has styled them—"the unloved profession." The hostilities are grounded in the fact that most traditional health and welfare professionals perform specific, definable jobs for which they are held accountable, and from which they can be fired—even debarred. By contrast, social workers flit about per-

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forming jobs that are ever a mystery to traditional health and welfare types, jobs for which they are never held accountable, and from which they never seem to be fired. (Transferred out perhaps, but never fired.) Just as schools of social work lack the heart to fail anyone for incompetence, neither does the profession have the heart to police or prune its considerable deadwood.

Interpersonal tensions run especially high in residential childcare, a field which the social work profession helped lobby into an industry, and in which it sets the administrative and supervisory tone. The problem here is that nothing in the education of the social worker equips him or her for leadership and the unpleasant task of telling adults and children—*especially* children—what to do. Trained to be "emotionally supportive," social workers make uneasy leaders (as anyone can attest who has watched them scramble to avoid sitting at the head of a table). Like the children they serve, social work leadership is blurred, self-conscious, nondirective, and always in need of support. The strain is especially apparent whenever social workers are put in charge of a favorite therapeutic activity, "group." In theory, group consists of youngsters gathered to share their traumas and vent their feelings so as to achieve better and more caring interpersonal relationships. In practice, it more often consists of a pack of street kids going for each other's jugulars while challenging the social worker's authority to make them do anything. The results are seldom what schools of social work lead their students to believe.

Often as not, it falls to childcare workers and counselors (who work at the minimum wage) to exercise the moral authority that cools the kids down and keeps the traumas in check. But, in abdicating its leadership responsibilities, social work forfeits the respect of childcare workers and ultimately discourages many of its practitioners. The true losers here are the kids. They are robbed of continuity and the lack of leadership feeds the rising incidence of drug use, robbery, assault, and homosexual hustling—activities which the profession, in its favorite non-judgemental, social science euphemism, prefers to explain away as "acting out." Increasingly, the burden of supervising the kids falls on older women who provide the system with what little moral sense it possesses. Many are black or Hispanic and possess few "professional" credentials beyond having spent their lives raising families and taking care of people in trouble. When these women pass from the scene, the so-called "continuing crisis in childcare" will resolve itself. Either social workers will come live with and protect the kids, or the system will explode.

In the end, social work is thrown back on what it considers its strength—individual and family therapy—to salvage its pride and justify its existence as an independent profession. Unfortunately, as countless social workers have discovered, what the profession considers its strength is in fact its Achilles heel. For example, experts

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in the field are agreed that the most effective therapeutic situation is one in which the client's participation is voluntary. In the world of social work, however, coercion is the most obvious, if unacknowledged, factor. One sees the game most sharply in residential childcare, where the profession has been granted a captive therapeutic clientele. Social workers are forever accusing kids of using a facility as merely a hotel (which in fact it is) whenever they skip their social worker appointments (which a great many do). Finally, and with the greatest reluctance, there comes a very tepid ultimatum reminding the child that he must allow a social worker to help him with his problems if he expects to continue receiving room and board. What often ensues is a cat and mouse affair in which the child, sensing the coercive manipulation, is not above engaging in some manipulation of his own. His street smarts may tell him that social workers have a vested interest in psycho-drama, or that, for funding purposes, the agency needs him as much as he needs it. If he is institutionalized long enough he may even pick up enough lingo to diagnose his own opposition as "passive-aggressive." Social work therapy can be criticized on a number of counts, but perhaps its worst effect is the manner in which it encourages dependency while educating its recipients in the arts of pseudo-psychological manipulation. The fact that it has had so little positive impact on its patients explains the mood of hopelessness among social workers. The realities of a career in missionary humanism are much different from the theology propounded in a psychology seminar.

Since the days of the lady almoners the social work profession has attempted to have the best of two worlds. In one world are doctors, nurses, and other rigorously trained specialists who provide the material benefits the poor most need, and which—along with financial aid—they are most anxious to get. In the other are childcare workers and hospital attendants who live and work with the poor, and who, in a sense, share their lot. The social work profession would like to claim the scientific expertise of doctors, and the experiential expertise of childcare workers, and in both instances their claims fall woefully short. As things stand, the profession is a costly and artificial anachronism. In America, as in Great Britain, its dismantlement could be construed as an act of mercy.

John S. Peterson, a New York writer, spent three years as a childcare worker in the 1970s.

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The Budget Watchers

ROBERT D. BEHN

***Joseph A. Pechman, ed.:* Setting National Priorities: The 1983 Budget.** *The Brookings Institution. 268 pp. $22.95 cloth; $8.95 paper.*

***Michael J. Boskin and Aaron Wildavsky:* The Federal Budget: Economics and Politics.** *Institute for Contemporary Studies. 411 pp. $19.95 cloth, $8.95 paper.*

***John L. Palmer and Isabel V. Sawhill, eds.:* The Reagan Experiment.** *The Urban Institute. 530 pp. $29.95 cloth; $12.95 paper.*

THE federal budget is the biggest political game around. Senators and Representatives compete with each other to get on the budget committees. The budget director's name is a household word. Newspapers print budget stories on their front pages (with some publications even distinguishing between outlays and budget authority). Wall Street, according to some, responded negatively to the latest prediction of an increase in the budget deficit—and positively to an increase in taxes. The federal budget is not just a political phenomenon but also a cultural one about which *The New Yorker* prints cartoons, the Congressional Budget Office keeps a scorecard, friends argue, politicians pontificate, Johnny Carson tells jokes—and scholars write books.

If you are concerned about public policy in the United States, you have to know something about the federal budget. And to understand the budget game, the players, and the rules, it helps to have a program. To that end the Brookings Institution, the Institute for Contemporary Studies, and the Urban Institute have each published collections of articles designed to provide an intelligent guide to the United States budget for the 1983 fiscal year (which runs from October 1, 1982 to September 30, 1983).

Of course, there is the official *Budget of the United States Government: Fiscal Year 1983*, prepared by the Office of Management and Budget and published (as it is each year) at the beginning of the Congressional session by the U.S. Government Printing Office. This official budget is difficult to digest, however; it is appropriate for the aficionado but not for the weekend spectator. For the FY 1983 budget document, like all its predecessors, is an odd combination of numbers and argument—column upon column and page upon page of numbers, interspersed with an unabashedly political analysis of what they mean.

But if you cannot tell an off-budget federal entity from a player-to-be-named-later, you need a program to understand the budget game. It will tell you what the key trends are and what those

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trends mean. It will tell you the key choices to be made, and what constraints limit those choices. And it will tell you what major dilemmas we face as the result of past choices and future trends. A program will also tell you why that great idea upon which you expounded in detail at the cocktail party last night will not eliminate the federal deficit.

BROOKINGS was the first to publish a program, *Setting National Priorities: The 1983 Budget*, last June. The Institute for Contemporary Studies followed in July with *The Federal Budget: Economics and Politics*. The Urban Institute did not release its book until September, though because it contained specific analyses of the impact of the Reagan program on various groups, its volume, *The Reagan Experiment*, received the most media attention.

Brookings received less attention for its volume because it has been producing a budget book for a dozen years. In 1970, when President Nixon presented Congress with the first budget prepared entirely by his administration, Charles L. Schultze, who had been the budget director from 1965 to 1968, edited the first volume in Brookings's now annual series. Lamenting that "the public is neither well informed nor much concerned about the composition—as opposed to the total size—of the budget of the federal government," Schultze sought "to explain the 1971 federal budget as a set of decisions about national priorities made in the crucible of limited resources." To many, this was simply the counterbudget of the Democratic Party in exile (for some of Schultze's collaborators had also served in the Johnson administration). But the book contained neither a counter-program nor a revised budget breakdown, though by the choice of topics to be analyzed and the conclusions reached, they did reveal clearly their policy preferences.

In fact, rereading the first edition of *Setting National Priorities* produces a tinge of budgetary *déjà vu*. For in a chapter titled "Problems in Some Older Programs," Schultze and company recite the horror stories, by now well known, of four specific programs: water resource projects, educational assistance to federally impacted areas, farm price supports, and maritime subsidies. The authors clearly believed that these programs should be ended (though there was no explicit call for their termination) but this was not a Democratic attack upon four Republican programs. Rather, it is the attack of the rational economist (liberal *and* conservative) on the economic inefficiencies of some politically popular programs.

Indeed, these four programs have been attacked by budget directors before Schultze and since, with President Jimmy Carter launching a personal crusade to terminate a number of particularly "wasteful" water resource projects. In the past decade all of these programs have been modified and scaled back. (After all, what big water projects are left? The Corps of Engineers and the Bureau of Reclamation have managed to put dams across most of the nation's

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rivers and to build canals where there were no rivers to dam.) In FY 1983, those programs are still on the books and costing money: no less than $3.4 billion for water projects, $340 million for impact aid, $1.8 billion for price supports, and $454 million for maritime subsidies.

These four programs are barely mentioned, however, in the current edition of *Setting National Priorities*. For although the four programs remain, the shape and size of the federal budget, the nature of its growth, and the fundamental problems of its management have all changed significantly since the Brookings series began. For FY 1971, President Nixon proposed a budget with revenues of $202.1 billion and outlays of $200.8 billion; he predicted a surplus of $1.3 billion, though by the end of that fiscal year, receipts were down, outlays were up, and the actual deficit was $23 billion. (Sound familiar?) For FY 1983, the numbers are quite different. What was the size of the *total* federal budget just over a decade ago—$200 billion—has become the number some people use as the potential size of this year's *deficit*. Water resource projects and maritime subsidies are still economically inefficient, but they are minor league problems.

Social security is the big leagues. In its original budget book, Brookings noted that in 1969 President Nixon proposed a 10 percent increase in social security benefits, but Congress "tacked a 15 percent benefit increase" onto other legislation. This additional 5 percent increased federal outlays by $1.5 billion in FY 1971. In fact, for that year, total social security outlays (not including Medicare) were $35 billion—hardly more than the $19 billion *increase* projected for FY 1983. For this fiscal year, social security outlays will be $174 billion—an increase from 3.4 percent of GNP in 1971 to 5.1 percent today.

Size is not the only difference between the FY 1971 and FY 1983 budgets for social security. For the earlier budget, Brookings noted:

> the OASI [old age and survivors insurance] and DI [disability] funds together will have a cash *surplus* of approximately $3 billion in 1971. The *surplus* will grow in future years . . . . the large *surpluses* . . . have clearly been welcome from the standpoint of fiscal policy . . . [and] are large enough to finance *upward* adjustments in benefits even beyond those needed merely to correct for the erosion due to inflation. [My italics.]

For the current fiscal year, however, Brookings's analysis is quite different:

> The balance of the retirement and survivors insurance trust fund is declining and will soon reach zero if no action is taken, but the two other trust funds [disability and medicare] have surpluses for the time being . . . . even if reserves of all three funds are pooled . . .

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> revenues may not be sufficient to meet all benefits promised under current law beyond 1984.

What a difference a decade makes.

This shift from a surplus to a deficit in the social security trust funds is symptomatic of the changes in the total federal budget. In its 1971 analysis, Brookings projected FY 1975 revenues to be $276 billion, and committed or proposed expenditures to be $253 billion. Assuming that it was necessary to maintain a $10 billion budget surplus "to achieve housing goals while avoiding inflation," this would still leave a $13 billion "fiscal dividend" for FY 1975. This, explained Brookings, was "an estimate of the resources available to the federal government to support new programs, to expand existing ones, to cut taxes or to retire debt."

Today, of course, there are no reports of a coming "fiscal dividend." Now all the talk is about deficits. In the latest Brookings budget book, Schultze emphasizes that "without further actions by Congress to reduce spending or raise taxes sharply," the deficit will be $230 billion by FY 1985. As an alternative, Schultze proposes a FY 1985 budget with a deficit of $80 billion (or 2 percent of the nation's GNP) and which "would require $150 billion of deficit reduction." To achieve this "ambitious goal," Schultze suggests a variety of measures, for "rather than being able to emphasize one set of alternatives over another, Congress will have to use many different sources of deficit reductions." Schultze's list includes the standard items: delays in some of the tax-cut provisions of the Economic Recovery Tax Act of 1981, new consumption taxes such as a value-added tax, elimination of the deduction for consumer interest on individual income taxes, taxing unemployment compensation and one-half of social security benefits, defense cuts (growing to $29 billion by FY 1985), changes in the indexing provisions of social security, and cuts in farm programs.

No wonder the federal budget is the big game in Washington today. Now the question is not how to allocate a "fiscal dividend" of $13 billion, but how to save $100 billion or so by cutting existing programs or raising taxes. Moreover, a political system that once allocated small, incremental growth in revenues to a number of programs cannot easily be adapted to the task of allocating substantially larger decrements. Not only is the federal budget the big game in town, it's a whole new ball game.

For the political task of decremental budgeting, Schultze suggests the development of a new political consensus—one similar to the political consensus which existed during our recent period of growth. Just as everyone's program expanded a little while revenues grew faster than existing commitments, so now everyone will have to share the pain. Schultze argues:

> there can be no major untouchable elements in the budget. The social and political consensus required to take action of the magnitude that is called for will not be forthcoming if any important sector of

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> the budget or of society is exempt. In particular, the program must include cuts in defense and social security and must require some sacrifice from those who received the bulk of the benefits of last year's individual tax cuts.

The budgetary necessity of building a political consensus may be as obvious as the need of the Boston Red Sox for better pitching. And it may prove just as elusive.

MICHAEL J. BOSKIN and Aaron Wildavsky, editors of the budget book published by the Institute for Contemporary Studies, also believe that budget deficits should be reduced—indeed, eliminated—through some combination of additional revenues, and defense and domestic cuts. They despair, however, of achieving the necessary political consensus. Several of the articles in their volume, *The Federal Budget: Economics and Politics*, are devoted to analyses of the political process by which budgetary decisions have been made in the past, are currently made, and might be made in the future. Boskin and Wildavsky believe that this is the best time for modifying the budget process so as to limit both government spending and government in general ("if ever Congress is going to take collective action, now is the time"), though they do not really anticipate that such reform will happen spontaneously. Thus they are prepared to modify the formal rules of the budget process: "If Congress cannot act reasonably without a spending limit, then either it must impose one on itself or the people—through the amending process—must do so for it."

Although the Senate did pass an amendment limiting federal spending last year, it was rejected by the House; the new Congress appears even less inclined to adopt one. Consequently, efforts to reduce the federal deficit in the short-run will have to rely on the imaginative use of existing procedures and political leadership. Indeed, this is what Arnold J. Meltsner advocates in his piece on "Budget Control through Political Action." Although sympathetic to limitation amendments, Meltsner believes that "we would all be better off if we could encourage the use of available democratic processes." Actually, what he really advocates is old fashioned political education. He is concerned less with "tinkering" with existing procedures than with the development of a "public philosophy on the appropriate scope of government activity and its associate expenditure level." He would like to replace the "distributional ethic of national politics" with a "cost consciousness" or "user-charge mentality." Meltsner writes: "The unsung hero in this context would be the one who fights *not* to bring the water project to his or her state or the unnecessary freeway to the city just to have federal money."

The development of such a political consciousness would indeed be a political revolution, for we have all been taught—at least political scientists have all been taught—that "who gets how much"

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is the fundamental political question. Indeed, this is the general issue addressed by the Urban Institute's *The Reagan Experiment.* John L. Palmer and Isabell V. Sawhill, the book's editors, concentrate their attention on "outcomes" rather than the budget process. For example, from their volume we learn that the net consequence of the 1981 domestic spending cuts, defense spending increases, and tax reductions, was a $145 per-capita gain for California in FY 1982, compared with a $38 per-capita loss for Arkansas. The Pacific West was the big regional winner, benefiting the most from both the tax reductions and the defense increases. By FY 1986, the Urban Institute projects, the per-capita benefit for the Pacific states will be $1,408—or nearly double the $611 per-person benefit for the states in the East South Central region (Kentucky, Tennessee, Alabama and Mississippi). (Since the tax cuts enacted in 1981 exceed the spending reductions, the result is a net per-capita gain, which the Urban Institute projects to average $965 for FY 1986.)

The "Reagan experiment" does "not turn back the clock in federal policy very far," the authors write; rather, it represents "a return to the early 1970s." But an important consequence of the "Reagan counterrevolution," as Palmer and Sawhill also call it, is that "there is now a long-term imbalance in the federal budget." And here the scholars from the Urban Institute appear to agree with those from both Brookings and the Institute for Contemporary Studies:

> a politically viable deficit-elimination program is likely to require a substantial retreat by the president from his original defense and tax objectives. In addition, very sizable further reductions in domestic spending will be necessary, including cuts in the politically sensitive Social Security and Medicare programs. Faced with these prospects, it will not be surprising if the president and the various factions of Congress continue to find it difficult to reach agreement over the next several years.

Thus we return to the need for political consensus—for an agreement about how much of the nation's income should be controlled by the federal government, how it should be spent, and how it should be obtained. The opinion polls do reveal an agreement of sorts: The American public wants to reduce spending and to balance the budget, but it does not want to cut back on any specific programs except those titled "fraud, waste, and abuse." Unfortunately, there exists no such line item. And although differences over goals may lead some to conclude that individual programs are frauds, or wasteful, or an abuse of governmental power, these three books make it very clear that the deficit cannot be reduced without real cutbacks.

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CURRENT READING

Writers' Rights

Recently, there has been a good deal of discussion in the United States of the rights of book authors. Publishers, distributors, and even libraries are accused of cheating authors out of royalties, refusing them adequate publicity, and otherwise exploiting them. The American Writers' Congress of 1981 was convened very largely to deal with these concerns, and there are even some tentative efforts to organize a writers' union. What will be the upshot if writers' rights are protected thoroughly enough to satisfy even the more militant authors? The history of the Public Lending Right (PLR) in the United Kingdom offers a clue.

The Public Lending Right Scheme, enacted into law by the British Parliament last year, grants to authors some compensation for use of their books in public lending libraries. Authors are given a small sum for each borrowing of their book. In the United Kingdom, borrowing figures will be estimated from data supplied by sixteen sample libraries. Computers will then apportion a fixed sum supplied by the government—at present £2 million—according to the popularity of each book. It is estimated that the pence per-loan rate will be somewhere between 1p and 0.5p. Before an author is eligible for any PLR payments he must register his books with a PLR office that is responsible for keeping track of the relevant data and calculating payment figures.

This seemingly innocent entitlement was won only after a lengthy political battle by the authors. Robert Hewison reports in the *Times Literary Supplement* ("Behind the Lines," August 27, 1982) that the struggle began back in 1951, when British authors, inspired by their Danish counterparts who have enjoyed PLR payments since 1948, began to campaign for similar remuneration. Scandinavian authors won PLR and maintained high rates only through militant tactics. The *TLS* reports that Swedish authors won a higher PLR rate with the following trick:

> Since a Swedish library ticket allows any number of books to be borrowed, on a single day in April authors descended on the principle libraries of Stockholm, Malmö, Gotherburg and Umea and carried off

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all the Swedish books. In Stockholm 600 people used five library tickets to take 1500 volumes away in furniture vans. The trick worked.

British authors contemplated using such tactics, but found that high-pressure lobbying worked just as well as mass action. According to Hewison: "The PLR campaign shows that it is possible for a small pressure group with a single aim to win through, provided it is both articulate and tenacious."

Now that British authors have secured PLR, it will require more than just tenacity to make the system work. Already elaborate preparations are being made in order to have the first payments out by February, 1984. A register of PLR has been appointed, one John Sumsion, a former shoe company executive. He has his work cut out for him:

> Mr. Sumsion's judgment of Solomon may be required where more than one author is involved, or where—as with children's books—the illustrations are a significant part of the work. If there are more than three authors involved, the work becomed ineligible. If one co-author is dead, likewise. If the collaborators cannot agree on the proportion of their contribution, the book will not be registered. There are niggling regulations concerning the relation of printed text to illustration. Mr. Sumsion is also exercised by books about contemporary artists which reproduce large quantities of their work. Should the artist, though not an illustrator, get a cut? These questions Mr. Sumsion will have to decide for himself, and he can call for a copy of the book if necessary.

And exactly how much will a registered author get for each borrowing of his book? No one knows yet, as the figure, which is to be based on 6 million sample borrowings, has not yet been calculated. That is yet another daunting task. According to the *TLS*: "The final calculation, on a computer the size of four filing cabinets, will take between eight and twelve hours, but the complications of establishing a new system mean that it will still be a rush to have the money paid by February 1984."

How have writers been responding to all these efforts in defense of their newly won right? Not well, according to a follow-up article by Hewison ("Behind the Lines," *TLS*, December 31, 1982). He writes:

> When a feasibility study of PLR was carried out it was estimated that some 50,000 people might register. So far, perhaps 3,000 have bothered to do so.
>
> The register, John Sumsion, has various explanations for this. One is simply that no one really knows what the true number of claimants should be. In Germany, where PLR has been operating for several years, the active recipients of PLR are only about 12,000, though one would expect the United Kingdom's literary population to be larger than that. He also points out that authors in this country are used to doing their business through publishers or agents, and where publish-

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ers have sent out registration forms with royalty statements the response has been very good. (I gather that MPs who are writers have registered almost to a man.)

Revisiting the "Doctor Shortage"

Forecasts of "shortages" and "crisis" are fairly common in every field: energy, environment, employment. We tend to read such forecasts, worry about them, then forget about them and turn to another forecast.

At a time of crisis-mongering, then, it is particularly useful to collect a number of forecasts made in the past and compare them to contemporary realities. James A. Sammon, executive vice-president of the American Medical Association, has performed such an exercise in a recent issue of *Health Affairs* ("Health Manpower in the Medical Marketplace," Fall 1982). There he compares projections of physician shortages made by several distinguished commissions and agencies between 1948 and 1967, and finds that these groups considerably underestimated the economic responsiveness of medical markets. The following table bears this out:

Projections of Physician Supplies and Requirements for Selected Years

Comparative Projections of Supplies and Requirements for 1960			
Projection Study	Estimated Requirements	Estimated Supply	Actual Supply
Ewing Report (1948)	254,000	212,000	248,664
Mountin-Pennel-Berger (1949)	233,532-261,172	216,119	248,664
President's Commission on Health Needs of the Nation (1953)	216,000-281,000	222,000	248,664
Comparative Projections of Supplies and Requirements for 1975			
Bane Committee (1959)	330,000 (minimum)	312,800-318,400	367,000
Fein (1967)	340,000-385,000	361,700	367,000
National Advisory Commission on Health Manpower (1967)	346,000 (minimum)	360,000	367,000
U.S. Public Health Service (1967)	400,000-425,000	360,000	367,000

Why were all these commissions so wrong? Sammon points to several federal programs that increased the supply of all medical personnel. But mainly he shows how the increase in demand for

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services led, as in any other market, to increases in supply as a larger number of students decided to pursue lucrative careers in medicine. The result is that the ratio of physicians to general population rose in the U.S. from 152 per 100,000 in 1971, to 154 in 1979.

Now, of course, forecasts made by health care specialists suggest that we have a great glut of physicians and that something must be done about it. Sammon again shows how the physician market has been coping with this "glut" in its own way.

> With the expanded supply of physicians, the concern over a shortage of physicians shifted to a concern over a surplus. In particular, planners projected that there would be too many physicians in certain specialties and that physicians would continue to cluster in metropolitan areas. However, according to recent studies, physicians have responded to market forces. That is, the physician population has followed the migration patterns of the general population. As the population has moved to the West and the Southwest, so have physicians. A researcher at the AMA's Center for Health Policy Research has studied the geographic movements of physicians over the period 1974-1978, and found that the largest out-migrations of physicians were from the Middle Atlantic and East North Central census divisions, and the largest in-migrations were into the Pacific and South Atlantic census divisions.
>
> In addition to these broad geographic movements, recent Rand studies have shown that board-certified physicians have tended to move to smaller communities with low physician density. Between 1960 and 1977, the percentage of communities with populations between 10,000 and 20,000 that had the services of all five of the largest specialties (internal medicine, surgery, pediatrics, obstetrics/gynecology, and radiology) rose from 3 to 18 percent. For communities with 20,000-30,000 population, the increase was even more dramatic, from 30 to 71 percent over the same period. By 1977, almost all communities with populations greater than 30,000 had all five of these specialties represented. . . .
>
> The combined market forces of decreasing financial attractiveness of medical practice and increasing educational costs to students are beginning to affect the workings of the medical education system. The number of medical schools in the United States has stabilized at 126, with few prospects for increases in the near future. The number of applicants to medical school has dropped steadily since 1974-1975, from 42,624 in that year to 36,100 in 1980-81, a decline of 15 percent.
>
> Partly as a consequence of those factors, the 17,204 new entrants into U.S. medical schools in 1980-1981 represented an increase of only 190 students over the previous year. This was the smallest rise in first-year enrollment since 1965 and was 86 percent less than the increase of 1,365 students from 1972 to 1973. Thus, both students and schools are responding to the market forces facing practicing physicians.

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Fiscal Constraint Begins at Home

Senators spend public resources in two ways. As members of a legislative body, they spend tax monies on public projects; but as employers, they also spend those monies on their own offices. Social scientists have long studied how different Senators vote to spend public resources in the first way, but until now none have studied how they spend it in the second—on themselves and their staffs.

James T. Bennett and Thomas J. DiLorenzo have published the findings of just such a study in the *American Economic Review* ("The Political Economy of Political Philosophy: Discretionary Spending by Senators on Staff," December 1982). Since Senators receive a fixed amount of money for staff based on several factors —most importantly, population—Bennett and DiLorenzo sought to explain which members *returned* the most unused funds to the Treasury. The question that most interested them was whether liberals and conservatives differed in their return of these public funds. The findings (with all the proper econometric qualifications) were unequivocal:

> Staff services and the level of funds returned to the Treasury were viewed as arguments in the politician's utility function. It was hypothesized that, other things held constant, one would expect conservatives who publicly eschew "excessive" government spending to gain greater utility by returning larger proportions of their staff allocations than "free spending" liberals. An empirical model was developed to test the hypothesis that conservatives, *ceteris paribus*, do in fact return a larger proportion of their staff allocations unspent than liberals. Four measures of conservatism were employed, and the empirical results were generally invariant to the indicator of political philosophy: senators who are conservative in making collective decisions are also fiscally conservative in spending public funds under their direct control. In contrast to the well-worn dictum of Governor George Wallace, there is, indeed, more than "a dime's worth of difference" between liberals and conservatives. The average senator receives an annual staff budget of slightly less than three-quarters of a million dollars, $712,670. Based on the ADA estimates . . . an ultraconservative [ADA = 0], would spend about $156,787, or 22 percent less on staff than an ultraliberal [ADA = 100].

Wlfr Clnts Wntd—No Exp Nec

With unemployment at record post-war levels, tax burdens still heavy, and a sluggish economy only slowly recovering, managers of the British welfare state are taking the only sensible approach: They are advertising for clients. But before clients can be placed one must have the social workers to find them. And to recruit social workers, one needs advertisements much like that recently placed in *New Society* (December 16, 1982) by the Greater London Council:

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—Welfare Benefits—

London's unclaimed £ millions

Many Londoners, including those in greatest need, fail to claim the welfare benefits to which they are entitled. £ millions currently remains unclaimed and those it is set aside to help, struggle to make ends meet.

The problem is so big, and so fundamentally important, that the Council is taking positive new steps to encourage Londoners to claim their full entitlement.

The catalyst for this major new initiative will be the project team which is about to be established within the Information Systems Branch of the Central Computer Service. The team will undertake the development work and the implementation and evaluation of specially designed computer systems to identify areas of entitlement and calculate levels of benefit. The team will also initiate and launch publicity campaigns to create awareness amongst potential claimants of the benefits available.

The project is big and important for London. The Council is now looking to recruit three key members of the team.

The team will consist of three salaried professionals: a Project Manager (£13,809-£15,021), an Assistant Project Manager-Training (£11,880-£13,353), and a Publicity Campaigns Assistant (£8,319-£11,538). Even if the staff is unsuccessful in finding welfare clients, it should have no trouble disposing of the extra funds.

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